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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of a democratic and equitable international order

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the fourth report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, submitted in accordance with Assembly resolution 69/178.

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Report of the Independent Expert on the promotion of a democratic and equitable international order

Summary

The present report, the fourth of the Independent Expert to the General Assembly, focuses on the impact of investor-State dispute settlement on a democratic and equitable international order and builds on the forthcoming report to the Human Rights Council on international investment agreements (A/HRC/30/44). The Independent Expert calls on the General Assembly to request from the International Court of Justice an advisory opinion on the priority of the Charter of the United Nations and United Nations human rights conventions over other treaties.

I. Introduction

1. According to the *World Investment Report 2015*, growing unease with the current functioning of the global international investment agreement regime, together with today's sustainable development imperative, the greater role of Governments in the economy and the evolution of the investment landscape, has triggered a move towards reforming international investment rule seeking to make it better suited for today's policy challenges. As a result, the regime is going through a period of reflection, review and revision. As is evident from the United Nations Conference on Trade and Development (UNCTAD) World Investment Forum, held in October 2014, from the heated public debate taking place in many countries, and from various parliamentary hearing processes, including at the regional level, a shared view is emerging on the need for reform of the international investment regime to ensure that it works for all stakeholders. The question is not about whether to reform or not, but about the "what", "how" and "extent" of such reform.[1]

2. The present report, the fourth by the Independent Expert to the General Assembly, should be read in conjunction with his report submitted to the upcoming thirtieth session of the Human Rights Council (A/HRC/30/44), in which he analyses the operation of international investment agreements. The present report focuses on the investor-State dispute settlements that accompanies many international investment agreements and their adverse impacts on a democratic and equitable international order. The Independent Expert integrates analyses of the UNCTAD *Trade and Development Report, 2014*[2] and the *World Investment Report 2015* as well as reports of the Working Group on the issue of human rights and transnational corporations and other business enterprises of the Human Rights Council[3] and the special rapporteurs dealing with matters of foreign debt, food, water, health, the environment, extreme poverty, indigenous peoples, the independence of judges and lawyers and international solidarity. He acknowledges academic works in the field of the human rights obligations of non-State actors.[4]

3. The added value of the report lies in the identification of threats to the democratic and equitable international order posed by international investment agreements that are not anchored in human rights and by investor-State dispute

[1] UNCTAD, *World Investment Report 2015: Reforming International Investment Governance*, United Nations publication, Sales No. E.15.II.D.5, chap. IV, introduction.

[2] United Nations publication, Sales No. E.14.II.D.4.

[3] Available from www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporations andotherbusiness.aspx.

[4] A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006); A. Clapham, ed., *Human Rights and Non-State Actors* (Elgar, 2013); O. De Schutter, "The accountability of multinationals for human rights violations in European law", New York University School of Law, 2004; O. De Schutter, "Human rights and transnational corporations: paving the way for a legally binding instrument", workshop convened by Ecuador on 11 and 12 March 2014 during the twenty-fifth session of the Human Rights Council; H. Verbitsky and J. Bohoslavsky, *Cuentas Pendientes: Los Cómplices Económicos de la Dictadura* (Buenos Aires, Siglo XXI, 2013); International Commission of Jurists, *Needs and Options for a New International Instrument in the Field of Business and Human Rights*; Amnesty International, "India: court decision requires Dow Chemical to respond to Bhopal gas tragedy", 3 July 2013; J. Wronka, *Human Rights and Social Justice: Social Action and Service for the Helping and Health Professions* (Sage, 2008); V. Nerlich, "Core crimes and transnational business corporations", *Journal of International Criminal Justice*, vol. 8, No. 3 (July 2010), pp. 895-908.

settlement arbitration regimes because they reduce the State's regulatory space and do not oblige the arbitrators to give priority to human rights treaty norms. It underlines the urgency of crafting future agreements in a way that prevents the abuses of the past and calls for a revamping of the existing 3,200 international investment agreements, more than 1,500 of which are due to expire.[5] The Independent Expert provides a fresh look from an independent perspective that places human rights at its centre and highlights pertinent provisions of the Vienna Convention on the Law of Treaties with a view to the revision or termination of some of these agreements and to the abolishment of investor-State dispute settlement as *contra bonos mores* and incompatible with provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

4. Pursuant to paragraph 6 of General Assembly resolution 69/178, the Independent Expert acknowledges that a democratic and equitable international order requires, inter alia, the realization of the right of peoples and nations to permanent sovereignty over their natural wealth and resources; the right of every human person and all peoples to development; international solidarity; the promotion of equitable access to benefits from the international distribution of wealth through enhanced international cooperation, in particular in international economic, commercial and financial relations; and the shared responsibility of the nations of the world for managing worldwide economic and social development, as well as threats to international peace and security, which should be exercised multilaterally.

5. Pursuant to paragraph 11 of the resolution, he has endeavoured to identify obstacles and undertaken to continue working urgently for the establishment of a new international economic order based on equity, sovereign equality, interdependence, common interest and cooperation among all States. He is also conscious of the preventive aspect of the mandate and recalls the reaffirmation in paragraph 12 that the international community should devise ways and means to remove the current obstacles and meet the challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting therefrom.

6. In recent years there has been a growing awareness by States, intergovernmental organizations, non-governmental organizations and religious institutions,[6] that the international investment agreement regime poses grave dangers to the enjoyment of human rights, but no global solution has been devised, possibly because of the complexity of the issues and the power of transnational enterprises and investors, who consistently oppose reform. The unbiased observer will have no problem understanding the two basic ontologies at stake. First is the ontology of the State, which is to legislate in the public interest, adopting laws, regulations and practices for

[5] UNCTAD, *World Investment Report*, chap. IV, p. 162.

[6] See, inter alia, the speech by Pope Francis in Santa Cruz, Bolivia, on 10 July 2015: "The new colonialism takes on different faces. At times it appears as the anonymous influence of Mammon: corporations, loan agencies, certain 'free trade' treaties, and the imposition of measures of 'austerity' which always tighten the belt of workers and the poor." This is perhaps an echo of Saint Jerome: "*Homo mercator vix aut nunquam potest Deo placere*" ("A man who is a merchant can scarcely or never please God"). http://en.radiovaticana.va/news/2015/07/10/pope_francis_speech_at_world_meeting_of_popular_movements/1157291; www.latribunadejulian romero.blogspot.com.es/2014/10/couple-of-couplespar-de-pares.html?m=1.

the welfare of the persons living under its jurisdiction, including improvement of labour standards, food security, clean water, medical care, a healthy environment, adequate shelter and the administration of justice by a transparent and accountable system of courts. This ontology is seen by some as a social contract. The second ontology is that of investment, business, enterprise, banking and other free economic activity. By their very nature these activities entail risk-taking, which justifies an expectation of profit. But can there be a guarantee that an investor who speculates or a bank that gives loans without adequate equity will always draw a profit? No, because sometimes investors win, sometimes they lose. What is abnormal is for an investor to demand a guarantee of profit, to create a parallel system of extrajudicial dispute resolution, which often is not independent, transparent, accountable, or even appealable, and to seek to usurp the function of the State and encroach on government regulation of fiscal and budgetary matters in the public interest. The last 25 years have delivered numerous examples of abuse of rights by investors and unconscionable arbitral awards that have not only led to violations of human rights, but have engendered a "regulatory chill" or even a "regulatory freeze", stopping States from adopting regulations on waste disposal or tobacco control for fear of being sued before investor-State dispute settlement tribunals that protect speculators making risky investments and deny States their regulatory space, imposing instead "austerity measures" on social services. A parallel may be drawn between the bailout of delinquent banks during the financial crisis of 2007-2008, when billions of dollars were paid from the public treasury, and the current practice of rescuing speculative investors when they take risks without insurance. This is tantamount to the privatization of profits and the socialization of losses. The mandate-related question concerning obstacles to the realization of a democratic and equitable international order requires acknowledgement of the adverse impacts of international investor agreements and investor-State dispute settlement on human rights.

II. Paradoxes

7. Over the past 70 years, the United Nations has conducted a magnificent normative orchestra which has put on the world stage not only the Universal Declaration of Human Rights, but legally binding instruments including 10 core human rights treaties and countless declarations and resolutions such as the Declaration on the Establishment of a New International Economic Order, the Declaration on the Right to Development and the United Nations Declaration on the Rights of Indigenous Peoples. The noble task of codification and refining human rights norms continues. Moreover, the United Nations has established implementation mechanisms, including treaty based bodies like the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which have advanced the work of standard-setting through the adoption of general comments on the provisions of the International Covenants and have engaged in monitoring activities, the examination of periodic State party reports and in situ visits. The Commission on Human Rights created the special procedures mechanism comprising working groups, special rapporteurs and independent experts, each of which is entrusted with a specific thematic or country mandate. Its successor, the Human Rights Council, has expanded on the issues covered by the special procedures and developed the universal periodic review. States have made pledges, for example, in connection with the Millennium Development Goals and the post-2015 development agenda. The Third International Conference on Financing for Development, held in

Addis Ababa in July 2015, resulted in the Addis Ababa Action Agenda and agreement on a draft outcome document[7] for the United Nations summit to adopt the post-2015 development agenda to be held in New York in September 2015, which merits significant strengthening. While the Independent Expert welcomes greater attention to financing for development, he is concerned that the existence of 3,200 international investment agreements and, in particular, of investor-State dispute settlements may render the implementation of the Action Agenda illusory.

8. Regionally, we have seen the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Protocols, the American Convention on Human Rights and the African Convention on Human and Peoples' Rights, all of them providing for human rights courts competent to adopt binding judgements. This enormous normative, monitoring and implementing activity manifests *opinio juris* generating an international customary international law of human rights that no State or non-State actor can ignore. Much has been written about the *erga omnes* character of the international human rights regime. What is needed is an explanation of how best to implement it and a clear statement from the International Court of Justice on the priority of human rights treaty obligations over other treaties.

9. Paradoxically, States enter into bilateral and multilateral free trade and investment treaties that hinder their compliance with human rights treaty obligations and result in the violation of civil, cultural, economic, political and social rights. Perhaps they follow the siren call of promised growth and employment, but seldom do they realize that investors are there for profit, will resist scrutiny by human rights bodies and reject legally binding obligations. Notwithstanding the foregoing, States are still bound by the International Covenants and must ensure that non-State actors operating in their territories do not violate human rights. States have a responsibility to protect, particularly with respect to the administration of justice. Article 14 of the International Covenant on Civil and Political Rights requires States to ensure that suits at law are examined by competent and independent tribunals in a regime of transparency and accountability.[8] Paradoxically, States have agreed to the creation of ad hoc investor-State dispute settlement tribunals that are frequently not independent, transparent or accountable. Studies have been published that manifest egregious abuses by specialized law firms in collusion with arbitrators and corporations using this system of "privatized justice" to escape adjudication before public courts under article 14. In the light of well-established and well-functioning domestic legal systems, investor-State dispute settlement offers no added value and yet, vested interests of powerful investors and transnational corporations have rendered it difficult to abolish it.[9]

10. Paradoxically, although States are bound to observe the public participation clause of article 25 of the International Covenant, they negotiate treaties in secret and exclude key stakeholders, including labour unions, consumer unions, health

[7] "Transforming our world: the 2030 agenda for sustainable development". Available from https://sustainabledevelopment.un.org/content/documents/7891TRANSFORMING%20OUR%20WORLD.pdf.

[8] Human Rights Committee, general comment No. 33 (2009).

[9] P. Eberhardt and C. Olivet, *Profiting from Injustice: How Law Firms, Arbitrators and Financiers Are Fuelling an Investment Arbitration Boom* (Brussels/Amsterdam, Corporate Europe Observatory, 2012); Corporate Europe Observatory, "Profiting from crisis. How corporations and lawyers are scavenging profits from Europe's crisis countries", 2014.

professionals and environmental protection groups. Sometimes, secret treaties are fast-tracked through parliaments so as to avoid public participation. This renders the agreements democratically illegitimate.

11. Are the legally binding obligations of States under human rights treaties then meaningless, just because there is no tribunal competent to impose sanctions on States that violate their responsibility to protect and no enforcement mechanism against investors? Are the legal obligations under human rights treaties inferior to treaty obligations under free trade and investment agreements? Are human rights treaties only a moral fig leaf for globalization?

12. Notwithstanding good diagnoses formulated, inter alia, by UNCTAD and the perceptive analysis of experts including Joseph Stiglitz, Paul Krugman and Jeronim Capaldo, pressures by transnational corporations continue to drive Governments to new international investment agreements with investor-State dispute settlement provisions that will aggravate matters and ultimately result in a breakdown of the system or even a crisis situation in which local, regional or international peace and security will be endangered.

13. A reason given for the establishment of investor-State dispute settlement tribunals is that investors did not trust national justice systems and preferred to create a separate jurisdiction for commercial disputes. It is difficult to understand why any State would accept the implicit disqualification of its national courts and consent to the creation of a privatized system of dispute settlement that has been widely recognized as lacking independence, transparency and accountability.

III. Core norms and principles

14. All States Members of the United Nations are bound by the Charter, which is akin to a world constitution. Article 103 of the Charter states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." This means that bilateral and multilateral free trade and investment agreements that contain provisions that conflict with the Charter must be revised or terminated, and incompatible provisions must be severed according to the doctrine of severability.[10]

15. Pursuant to the cardinal norm of international law *pacta sunt servanda*, enshrined in article 26 of the Vienna Convention on the Law of Treaties, existing treaties must be implemented "in good faith", and no subsequent treaty can be considered legitimate if it hinders the performance of commitments under existing treaties unless the parties explicitly agree to modify the previous treaties. Inadvertent incompatibilities can be resolved in good faith by interpreting the subsequent treaty in a manner consistent with the prior treaty, applying articles 31 and 32 of the Convention. Pursuant to Article 103 of the Charter, subsequent treaties must in any case conform to the Charter and are invalid if they impede the fulfilment of its purposes and principles, including its human rights provisions. The

[10] See the summary records of the International Law Commission; Human Rights Committee, general comment No. 24 (1994); Roslyn Moloney, "Incompatible reservations to human rights treaties: severability and the problem of State consent", *Melbourne Journal of International Law*, vol. 5, No. 1 (May 2004).

argument has merit that since most States parties to international investment agreements were already parties to United Nations human rights treaties, including the International Covenants, the principle of *pacta sunt servanda* requires the implementation of these United Nations treaties and the international investment agreements must be interpreted and applied in a manner that does not contravene the Charter or United Ntaions treaties, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), the Framework Convention on Tobacco Control of the World Health Organization (WHO), conventions of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Children's Fund (UNICEF) and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) of the Economic Commission for Europe.

16. According to customary international law and article 53 of the Vienna Convention, treaties or treaty provisions that violate peremptory norms of international law (*jus cogens*) are *contra bonos mores* and therefore null and void.[11] This encompasses a category of contracts and treaties entailing unethical activities, or whose foreseeable consequences are contrary to the protective functions of the State. Thus, any treaty that hinders the ability of a State to fulfil its obligations under United Nations human rights treaties is incompatible with international *ordre public* and with the commitments undertaken by all States pursuant to the Charter. Similarly, so-called "leonine", or unequal, treaties, such as existed between some new States and former colonial Powers must be considered contrary to the Charter and incompatible with the principle of equality of States. The notion of *jus cogens* was further elucidated in the process of codification of article 41 of the draft articles on Responsibility of States for internationally wrongful acts (see A/56/10 and Corr.1), adopted by the International Law Commission in 2001.[12]

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[11] Hersch Lauterpacht, in the first Report on the Law of Treaties to the International Law Commission, suggested that "rules of international morality so cogent" could constitute principles of international public policy that void treaties. See *Yearbook of the International Law Commission 1953*, vol. II. See also Michael Akehurst, who argues that morality underpins the process through which conventional or customary rules acquire a peremptory character. M. Akehurst, "The hierarchy of sources in international law", *British Yearbook of International Law*, vol. 47, No. 1 (1975), pp. 273, 283. See further International Law Commission, summary records of the 683rd meeting (A/CN.4/SR.683) (1963), para. 45, available from http://legal.un.org/docs/?path=../ilc/documentation/english/summary_records/a_cn4_sr683.pdf&lang=EFS. Alfred Verdross advanced the position that the "higher interests of the whole international community" were capable of voiding "immoral treaties" in violation of a compulsory norm of general international law. A. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (Vienna, Springer, 1926), pp. 21 ff. See further A. Verdross, "Jus dispositivum and jus cogens", in *International Law in the Twentieth Century*, L. Gross, ed. (New York, Appleton-Century-Crofts, 1969), pp. 222-223; Hermann Mosler, *The International Society as a Legal Community* (Springer, 1980), p. 142; R. Y. Jennings, "Nullity and effectiveness in international law" in *Cambridge Essays in International Law: Essays in Honour of Lord McNair* (London, 1965), pp. 64, 74; G. Hernandez, "A reluctant guardian: the International Court of Justice and the concept of 'international community'", *British Yearbook of International Law*, vol. 83, No. 1 (2012), pp. 13-60.

[12] C. Tams and others, eds., *Research Handbook on the Law of Treaties* (Elgar, 2014). S. Talmon, "The duty not to recognize as lawful a situation created by the illegal use of force or other serious breaches of a *jus cogens* obligation" in C. Tomuschat and J.-M. Thouvenin, eds., *The Fundamental Rules of the International Legal Order* (Nijhoff, 2006).

17. When addressing macroeconomic problems and human rights violations ensuing from the usurpation of State functions by transnational enterprises, the "general principles of law" referred to in article 38 (1) of the Statute of the International Court of Justice come into play, including estoppel, *ex injuria non oritur jus*, the prohibition of abuse of rights,[13] *ultra vires* conduct and the invalidity of *contra bonos mores* agreements. Indeed, all systems of justice recognize that there are certain unwritten laws of humanity, as in Sophocles' *Antigone*, the very spirit of the law (Montesquieu), those immanent values that precede codification of norms. Experience with existing international investment agreements, in particular investor-State dispute settlement tribunals, raises multiple issues of abuse of rights. The essence of the doctrine of abuse of rights is found in the principle of Roman law, *sic utere jure tuo ut alienum non laedas*, which stipulates the exercise of individual rights in such a manner that does not harm others. Inherent to legal thinking is the notion that because all subjects of international law can abuse rights, controls on the exercise of such rights must be established as a matter of *ordre public*. Courts and arbitral tribunals must respect these general principles of law and the principle of equity recognized in the Statute of the International Court of Justice (art. 38 (2)).

18. Domestic and international criminal law as well as the Rome Statute of the International Criminal Court may be of relevance in the context of economic crimes, especially when economic and financial activities result in grave violations of human rights, including mass unemployment, dislocation of the agricultural sector, destruction of food security or even famine, food fraud, devastation of the environment, water pollution, radioactive contamination resulting in death from cancers and other health complications, genetic deformations and destruction of ecosystems (ecocide). Such activities are assaults on human dignity and crimes against humanity justiciable under article 7 (1) (k) of the Statute *juncto* the criminal law principle of reckless endangerment. Perpetrators can be the pharmaceutical industry; mining enterprises, in particular gold and uranium mining; and gas and petroleum extraction, fracking and ozone-destroying enterprises. Such crimes should be susceptible to universal jurisdiction.[14] The United Nations Convention against Corruption of 2003 may have relevance with regard to corporate activities, including bribing public officials. Hitherto, investor-State dispute settlement tribunals have not been required to take these treaties into account and have tended to privilege the economic interests of investors over the imperatives of protecting human rights and the environment.

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[13] A. Kiss, "Abuse of rights" in R. Wulfrum, *Max Planck Encyclopaedia of Public International Law*, vol. I (2006), pp. 20-26. M. Byers, "Abuse of rights: an old principle, a new age", *McGill Law Journal*, vol. 47 (2002), pp. 389-431. See for instance the reference to abuse of rights in *Trail smelter case (United States, Canada), Reports of International Arbitral Awards*, vol. III, p. 1905 and in article 300 of the United Nations Convention on the Law of the Sea: "States Parties shall fulfil in good faith the obligations ... in a manner which would not constitute an abuse of right". See also V. Paul, "Abuse of rights and bona fides in international law" in *Österreichische Zeitschrift für öffentliches Recht und Völkerrecht*, vol. 28 (1977), pp. 107-130; B. O. Iluyomade, "The scope and content of a complaint of abuse of right in international law", *Harvard International Law Journal*, vol. 16 (1975), pp. 47-92.

[14] H. Pontell and G. Geis, eds., *White Collar and Corporate Crime* (Springer, 2007). Cf. Cesare Lombroso, "Delitti vecchi e deliti nuove", 1902, anticipating Edwin Sutherland's *White Collar Crime*, 1949.

19. Human rights treaties, general principles of law, customary international law, declarations and resolutions constitute a symbiosis of norms of hard law and soft law, an international *ordre public* essential to achieving a democratic and equitable international order. Together with domestic *ordre public* this legal regime overrides any attempt by investors to subvert the rule of law through international investment agreements that challenge the democratic safeguards of national legislative and judicial bodies.

20. It is consistent with the United Nations mandate to promote stability and cooperation by calling upon States to regulate the activities of investors and transnational enterprises registered or operating within their jurisdiction and to foreclose the threat or use of economic force in any manner inconsistent with the Charter.

IV. Investor-State dispute settlement

21. Investor-State dispute settlement is a rather recent and arbitrary construction, a privatized form of dispute settlement that accompanies many international investment agreements. Rather than litigating before local courts or invoking diplomatic protection, investors rely on three arbitrators who in confidential proceedings decide whether their rights and investment have been violated by a State. Whereas investor-State dispute settlement tribunals can entertain suits by investors against States, they do not entertain suits by States against investors, for example, when investors violate national laws and regulations, pollute the environment and the water supplies, introduce potentially dangerous genetically modified organisms, etc. A birth defect of investor-State dispute settlement is its "Trojan horse" quality: it was introduced into international investment agreements without full disclosure as to its potentially intrusive application, without the participation of key stakeholders at the time of elaboration and without public referendum, hence lacking democratic legitimacy. Bearing in mind their impacts, Governments have a duty to proactively inform constituents. Not doing so amounts to violating articles 19 and 25 of the International Covenant on Civil and Political Rights. The texts of many international investment agreements have only been obtained through freedom of information suits and Wikileaks revelations.

22. The *World Investment Report 2015* surveys the situation and presents a menu of options. Among the reasons given for the establishment and maintenance of investor-State dispute settlement tribunals is that they provide an additional avenue of legal redress and a more effective system of enforcement. This argument does not address the question whether such an avenue is really necessary, and whether it contributes to a fragmentation of international law, inconsistency in arbitral jurisprudence and a general lack of predictability, introducing a "chilling effect" on legitimate State regulation in the public interest. Another argument sometimes made in favour of investor-State dispute settlement is avoidance of cumbersome diplomatic protection. But is this a valid argument in the light of the Charter and customary international law? Diplomatic protection does have a long history in international relations and has proven to be a useful and frequently effective way of settling disputes, wholly in the spirit of Articles 1 and 2 of the Charter.

23. There are multiple reasons to oppose investor-State dispute settlement, based on the necessities of democratic governance, the administration of justice through

transparent and accountable courts, the doctrine of State sovereignty and human rights law. It is difficult to justify that investor-State dispute settlement grants foreign investors greater rights than domestic investors, thereby creating unequal competitive conditions. The lack of transparency of investor-State dispute settlement tribunals and concerns about the independence and impartiality of the arbitrators are fundamental problems that cannot be solved by "fixing" existing investor-State dispute settlement mechanisms, by using filters or limiting investors' access, for example by reducing the scope of the subject-matter. Investor-State dispute settlement creates artificial incentives to gain access to privatized arbitration, exposing host States to considerable legal and financial risks. Indeed, both the remuneration of arbitrators and lawyers' fees are unconscionably high. Investor-State dispute settlement awards have led States to abandon measures to protect public health and to lower environmental standards. The regulatory chill resulting from the mere existence of the investor-State dispute settlement system has dissuaded, and may in the future dissuade, States from taking measures to respect, protect and fulfil their human rights obligations and thus have a negative impact on the democratic and equitable international order.

24. Lori Wallach of the organization Public Citizen has shown how investment treaties "allow companies to challenge public interest regulations outside of domestic court systems before tribunals of three private-sector trade attorneys operating under minimal to no conflict of interest rules". Ska Keller, member of the European Parliament representing the European Greens, wrote that "[d]emocratic decision-making is forcefully going under the knife through international arbitration. The accused states have only two options: either they can be like others and take back the decisions they have made, or they can pay huge sums in compensation to the investor". Daniel J. Ikenson of the Cato Institute concludes that "investor-State dispute settlement turns national treatment on its head, giving privileges to foreign companies that are not available to domestic companies".[15] Indeed, investor-State dispute settlement poses a particular challenge to the democratic order, particularly when Governments that have been democratically elected to carry out specific social policies have been sued by investors precisely because of those democratically mandated policies.

25. Although international tribunals can and should declare frivolous cases inadmissible for abuse of the right of submission (see article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights) or abuse of procedure, investor-State dispute settlement tribunals seldom do so and entertain frivolous and vexatious litigation at huge expense to the parties, which is particularly harmful to developing countries.

26. According to the *World Investment Report 2015* there are 608 known investor-State dispute settlement cases in which 99 Governments have been respondents to one or more known claims. In 2014 investors initiated 42 known cases, 35 of which were brought by investors from developed countries and 5 by investors from developing countries; in 2 cases the nationality of the claimants is unknown. Counting from the start, the most frequently cited home States were the United States of America (129), the Netherlands (67), the United Kingdom of Great Britain and Northern Ireland (51), Germany (42) and France (36). The respondent States

[15] http://csis.org/files/publication/141029_investor_state_dispute_settlement.pdf. See also http://ttip2015.eu/blog-detail/blog/isds%20risks.html.

most frequently concerned were Argentina (56), Venezuela (36), the Czech Republic (29) and Egypt (24). UNCTAD publishes a revealing chart showing the results of decisions on the merits indicating that 60 per cent were in favour of the investor and 40 per cent in favour of the State. It should be recalled that investor-State dispute settlement only takes cases of investors against States and does not accept suits by States against investors. Thus, the 60 per cent of cases lost by States do hurt and the billions of dollars awarded to investors are ultimately paid by the public, meaning that there is that much less money available for education, health care or infrastructure. Statistics show that about 64 per cent of the awards went to companies with over $10 billion in annual revenue and 29 per cent to companies with between $1 billion and $10 billion in annual revenue, or to individuals with a net wealth of over $100 million, indicating that the primary beneficiaries of financial transfers in investor-State dispute settlement awards have been ultra-large companies and super-wealthy tycoons. The largest award, in the *Yukos Universal Ltd. (Isle of Man) v. The Russian Federation* cases, amounted to over $50 billion and the legal fees exceeded $60 million. Other awards have affected countries like Ecuador which in 2012 was ordered to pay $2.3 billion to Occidental Petroleum (see para. 30 below).

27. A report to the General Assembly is too short to lay out the human rights incompatibilities of investor-State dispute settlement, but one may address a few symptomatic problems for which there is no "quick fix". The list of *contra bonos mores* investor-State dispute settlement awards is long. The present report cannot summarize them, not only because of space limitations, but out of moral vertigo.

28. *Metalclad v. Mexico*. A case under the North American Free Trade Agreement (NAFTA) concerned a waste management business, Metalclad, which sued Mexico, claiming indirect expropriation (E/CN.4/Sub.2/2003/9, paras. 33 ff). In 1993, Metalclad had purchased a local waste management company with a view to building and operating a waste landfill facility. The project was subject to permits from the municipal, state and federal levels of government. Although the municipality had previously denied the permit, Metalclad went ahead. Because of environmental concerns and the opposition of local inhabitants, municipal authorities never issued the permits. Finally, state authorities issued an ecological decree declaring the area a natural reserve, forcing the waste management project to close. The investor-State dispute settlement tribunal found that the Government had taken a measure tantamount to expropriation and ordered Mexico to pay $16.7 million in compensation. Mexico sought statutory review of the decision and the Government of Canada intervened in the proceedings. A justice of the Supreme Court of British Columbia found that:

> The Tribunal gave an extremely broad definition of expropriation for the purposes of Article 1110 [of the Agreement]. In addition to the more conventional notion of expropriation involving a taking of property, the Tribunal held that expropriation under the NAFTA includes covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be expected economic benefit of property. This definition is sufficiently

broad to include a legitimate zoning of property by a municipality or other zoning authority.[16]

29. A study of the Subcommission on Promotion and Protection of Human Rights in 2003 noted:

> Such broad interpretations of expropriation provisions could have direct consequences for regulations intended to promote and protect human rights ... government action in relation to chemicals and toxic wastes has flow-on effects in relation to the enjoyment of human rights such as the right to health or the right to water ... One commentator has suggested that broad interpretations of expropriation provisions could reverse the established tenet of environmental policy that the polluters should bear the cost of their pollution rather than be paid not to pollute (E/CN.4/Sub.2/2003/9, para. 35).[17]

30. *Occidental Petroleum v. Ecuador*. On 5 October 2012, a split tribunal of the International Centre for Settlement of Investment Disputes determined that Ecuador had breached a bilateral investment treaty between the United States and Ecuador and awarded damages of $2.3 billion, then the largest award ever issued by such a tribunal. The award demonstrates the vast power that tribunals wield and raises important normative questions about the International Centre.[18] Although the tribunal found that Occidental had illegally sold 40 per cent of its production rights to another firm without government approval, despite a specific provision in the concession contract stating that the sale of production rights without government pre-approval would constitute a material breach of the contract, and notwithstanding the fact that the contract explicitly enforced Ecuador's hydrocarbons law, which protects the Government's prerogative to vet companies seeking to produce oil in the environmentally sensitive Amazon region, two out of the three arbitrators decided to put aside Ecuador's concerns about the breach of contract by Occidental and found in favour of the transnational, applying an abstruse proportionality argument. The dissenting arbitrator expressed complete disagreement with the award.[19] Ecuador subsequently filed a request for annulment of the award; decision is pending.

31. *Renco v. Peru*. The Renco Group is currently using the investor-State dispute settlement mechanism to evade justice for causing massive pollution in La Oroya, Peru, where its subsidiary, Doe Run, has failed to fulfil its commitments to limit emissions and clean up grievous pollution. Peru gave Doe Run two extensions to halt the pollution. When the Government refused to grant a third extension on the company's unfulfilled 1997 commitment to install pollution mitigation devices and assume its liability for the health damage already caused, Renco used the investor-State dispute settlement tactic to pressure the Government to allow it to reopen its smelter without installing pollution-capturing devices. Investor-State dispute

[16] *The United Mexican States v. Metalclad Corporation*, Supreme Court of British Columbia, Reasons for judgement of the Honourable Mr. Justice Tyson, 22 May 2001, para. (99).

[17] Citing *Private Rights, Public Problems: A Guide to NAFTA's Controversial Chapter on Investor Rights* (Winnipeg, Canada, International Institute for Sustainable Development and World Wildlife Fund, 2001), p. 33. See also https://gusvanharten.files.wordpress.com/2015/05/appendix-c-opinion-articles-of-g-van-harten.pdf.

[18] http://kluwerarbitrationblog.com/blog/2012/12/19/icsids-largest-award-in-history-an-overview-of-occidental-petroleum-corporation-v-the-republic-of-ecuador/.

[19] International Centre for Settlement of Investment Disputes, *Occidental Petroleum Corporation v. Ecuador* (case No. ARB/06/11), award, 5 October 2012, para. 527.

settlement has thus been used to evade justice in Peru. Meanwhile, in the United States, beginning in October 1997, 11 personal injury lawsuits against Renco and Doe Run were filed in Missouri state courts on behalf of 162 sick Oroyan children. Proceedings in the cases have stopped pending the outcome of the investor-State dispute settlement arbitration.[20]

32. *Chevron v. Ecuador*. One of the most problematic cases from the aspect of conduct *contra bonos mores* and abuse of rights on the part of the investor-State dispute settlement claimants is *Chevron v. Ecuador*. The case started with a series of judicial proceedings under Ecuadorian law against Texaco (previous corporate name) because of environmental damage caused by Texaco's operations in the Amazon. In a pristine rainforest environment, Texaco dug 350 oil wells and, upon leaving Ecuador, left behind some one thousand open-air, unlined waste pits filled with crude and toxic sludge. The pits subsequently leaked into the water table, polluting rivers and streams that tens of thousands of people depend on for drinking, cooking, bathing and fishing. Chevron is also accused of responsibility for dumping more than 18 billion gallons of toxic wastewater — a byproduct of the drilling process — into the rivers. At the height of its operations, the company was dumping 4 million gallons per day, a practice outlawed in major United States oil-producing states decades before the company began operations in Ecuador in 1967. By handling its toxic waste in Ecuador in ways that were illegal in its home country, Texaco saved an estimated $3 per barrel of oil produced. A public health crisis of immense proportions occurred in the Ecuadorian Amazon, the root cause of which was massive contamination from 40 years of oil-drilling operations. The contamination contributed to cancers, miscarriages, birth defects and other ailments. In 2011 the Supreme Court of Ecuador sentenced Chevron to pay $9.5 billion in damages. Chevron refused to pay and instead sued Ecuador under the United States-Ecuador bilateral investment treaty for loss of profits (see A/HRC/21/47 and A/HRC/24/41). The case has been going on for several years and attorneys' fees are already in the millions of dollars.

33. Meanwhile, the Permanent Court of Arbitration at The Hague found in favour of Ecuador, which sought to pursue its claims for environmental damage against Chevron despite settlement of the case;[21] however, no one knows how the case will eventually play out.

34. *Vattenfall v. Germany*. The Swedish energy provider Vattenfall filed an investor-State dispute settlement suit against Germany in May 2012, pursuant to the Energy Charter Treaty, demanding a reported $5 billion for Germany's decision to phase out nuclear power, a decision adopted in response to widespread German public opposition to nuclear power generation in the wake of the 2011 Fukushima nuclear power disaster in Japan. The German parliament amended the Atomic Energy Act to roll back a 2010 extension of the lifespan of nuclear plants and to abandon the use of nuclear energy by 2022. Vattenfall argues that Germany's policy change violates its obligations to foreign investors under the Energy Charter Treaty.

[20] www.italaw.com/cases/906. https://systemicdisorder.wordpress.com/tag/trans-pacific-partnership/.

[21] http://business-humanrights.org/en/hague-tribunal-rules-for-ecuador-in-investment-arbitration-with-chevron-govt%E2%80%99s-settlement-with-firm-did-not-preclude-oil-pollution-case-by-ecuadorian-plaintiffs.

Whereas Germany objected to Vattenfall's claim as "manifestly without merit", the investor-State dispute settlement decided in 2013 to allow the claim to proceed.[22]

35. *Philip Morris v. Uruguay*. WHO has repeatedly warned about the global health dangers posed by tobacco and 180 States have adhered to the Framework Convention on Tobacco Control. It is estimated that 70 per cent of the 8.4 million deaths attributable to tobacco in 2020 will occur in developing countries. One country that has taken the Framework Convention seriously is Uruguay. In a "David v. Goliath" confrontation, tobacco giant Philip Morris is suing Uruguay for its anti-tobacco regulations. Uruguay's gross domestic product in 2013 was about $55.7 billion, while Philip Morris's revenues the same year reached $80.2 billion. Philip Morris wants $25 million in compensation from Uruguay. If Philip Morris wins, it is likely to seriously compromise the WHO anti-tobacco campaign.[23] A decision from the International Centre for Settlement of Investment Disputes is expected later in 2015.

36. *Philip Morris v. Australia*.[24] This case is similar on the merits, but procedurally it demonstrates the abuse of rights prevalent in the investor-State dispute settlement system. In order to sue Australia, Philip Morris established a "shell" or "mailbox" company in Hong Kong, to take advantage of the Hong Kong-Australia bilateral investment treaty.[25]

37. *Vodaphone v. India*.[26] Using its Dutch subsidiary, Vodafone is suing India for $2.2 billion in connection with India's taxation of Vodafone activities deriving from a transaction conducted in a tax haven (Cayman Islands), although all the assets are in India. At issue is whether a State can adopt legislation to end tax avoidance, for example, through the General Anti-Avoidance Rule of the Finance Act 2012.

A. Conflict with regional legislation, decisions of human rights tribunals and the constitutional separation of powers

38. Conflict between investor-State dispute settlement rulings and European Union law has led to legal uncertainty and conflicting obligations for member States. The *Micula v. Romania* case concerned a Swedish company which had invested in Romania before the country's accession to the European Union. The company had taken up business incentives offered by the Government of Romania. However, when it acceded to the European Union, in order to comply with rules on State aid Romania discontinued its incentives programme. Micula sued Romania pursuant to the Romania-Sweden bilateral investment treaty. Investor-State dispute settlement awarded $250 million to Micula for violation of the investment agreement. In 2014, the European Union served an injunction on Romania provisionally ordering it not to pay the compensation because doing so would be

[22] www.isdscorporateattacks.org/#!energy/cqoo.

[23] www.who.int/fctc/signatories_parties/en/. www.triplepundit.com/2015/04/philip-morris-vs-uruguay-lawsuit-a-threat-to-smoking-restrictions-worldwide/. www.italaw.com/cases/460.

[24] *Philip Morris Asia Limited v. The Commonwealth of Australia*, Order of the High Court of Australia (Tobacco Plain Packaging Act). www.italaw.com/sites/default/files/case-documents/italaw1103.pdf. www.ag.gov.au/tobaccoplainpackaging.

[25] www.iisd.org/pdf/2012/iisd_itn_january_2012_en.pdf.

[26] www.southcentre.int/wp-content/uploads/2015/07/IPB3_India's-Experience-with-BITs_ENdf.

contrary to European legislation. This situation illustrates the risk incurred by member States when bringing legislation into line with European Union standards.[27]

39. In the case involving the Marlin mine run by the Goldcorp company in Guatemala, the Inter-American Commission on Human Rights had found that the mine should be closed because of the dangers to health posed by its operation. Under considerable pressure, however, the recommendation of the Inter-American Court of Human Rights was withdrawn, although the case continues before the Court on the basis of failure to secure lack of free, prior and informed consent.[28] In the case of the Mayoc mine in Peru, the Court declared the case admissible but did not order the suspension of operations, notwithstanding the dangers to the health of the indigenous communities in the region.[29] In other mining cases, military forces have been used to suppress public protest, mostly against local indigenous populations.

40. In the ongoing *Chevron v. Ecuador* litigation, investor-State dispute settlement arbitrators have repeatedly ordered the executive branch in Ecuador to prohibit the enforcement of the highest judicial instances of the country. This is tantamount to dismantlement of checks and balances and a violation of article 14 of the International Covenant on Civil and Political Rights. If anything is *contra bonos mores* it is this attack on the rule of law and on the constitutional separation of powers.

B. Chilling effect

41. In his 2014 report to the General Assembly (A/69/299), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that States are vulnerable to dispute settlement procedures when they give priority to their obligations under human rights treaties and thereby breach an obligation under an international investment agreement. This was the case when Ethyl Corporation submitted a claim against a public health decision by the Government of Canada to impose a trade ban on a gasoline additive produced by the corporation.[30] Canada chose to bend because of the high cost of arbitration and the danger of an adverse judgement. This illustrates how the mere existence of investor-State dispute settlement can create a chilling effect on States, dissuading them from fulfilling their right to health obligations.[31] Such disputes may also deplete the States' resources and affect their ability to progressively realize the resource-dependent aspects of the right to health. The fact that international investment agreements are treated as a "stand-alone legal code" and often do not contain references to the right to health contravenes *ordre public*. Hence,

[27] www.beuc.eu/blog/the-micula-case-when-isds-messes-with-eu-law/.

[28] https://intercontinentalcry.org/inter-american-commission-on-human-rights-gives-in-to-pressure-from-guetamala/; www.oas.org/en/iachr/indigenous/protection/precautionary.asp; http://en.centralamericadata.com/en/article/home/Temporary_Closure_of_Marlin_Mine_Ordered_in_Guatemala. http://en.centralamericadata.com/en/search?q1=content_en_le:%22Inter-American+Commission+on+Human+Rights+%28IACHR%29%22.

[29] www1.umn.edu/humanrts/cases/69-04.html.

[30] *Ethyl Corporation v. Canada*, award on jurisdiction, judgement of 24 June 1998.

[31] D. Gantz, "The evolution of FTA investment provisions: from NAFTA to the United States-Chile Free Trade Agreement", *American University International Law Review*, vol. 19, No. 4 (2003), p. 684.

international investment agreements must be interpreted in a manner that does not conflict with human rights law because "the purpose of both development-stimulating investment treaties and human rights laws is to benefit individuals" (A/69/299, paras. 45 and 55).

42. The 2003 study of the Subcommission on Promotion and Protection of Human Rights referred to above had flagged the abuse of rights being perpetrated by investor-State dispute settlement tribunals (E/CN.4/Sub.2/2003/9, para. 32). That report gives many examples of the chilling effect, including the unconscionable suit brought by the Ethyl Corporation against Canada,[32] illustrating how government resources are wasted in litigation and how legitimate measures by States have been frustrated by investor-State dispute settlement.

43. The *Philip Morris v. Uruguay* case would probably have ended in surrender by Uruguay. Daunted by the prospect of paying contract lawyers $1,500 an hour for several years, President José Mujica almost settled the claim and only decided to defend Uruguay's laws after former President Vázquez voiced a protest and Michael Bloomberg, the former Mayor of New York City, decided to help finance Uruguay's defence team.[33] This justifies the establishment of an international fund for the defence of investor-State dispute settlement cases, modelled on the World Trade Organization (WTO) Technical Expertise Trust Fund for dispute settlement.[34]

44. It is reported that the mere threat of an investor-State dispute settlement case stopped Canada from banning the words "light" and "mild" in its tobacco control laws.[35]

45. Environmental regulation has also been under attack in Canada, as a former government official reported: "I've seen the letters from the New York and [Washington] DC law firms coming up to the Canadian government on virtually every new environmental regulation [...]. Virtually all of the new initiatives were targeted and most of them never saw the light of day".[36]

46. Threats of expensive lawsuits against Governments are becoming more frequent than actual claims. Thus, investor-State dispute settlement has mutated from a corporate shield against allegedly unfair behaviour by States into a tactical weapon to delay, weaken and kill regulation. Specialized law firms actually encourage their multinational clients to scare Governments into submission: "It's a lobbying tool in the sense that you can go in and say, 'Ok, if you do this, we will be suing you for compensation.' It does change behaviour in certain cases".[37]

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[32] The Ethyl Corporation case (1996-1998) is discussed in *Private Rights, Public Problems*, pp. 71-72.

[33] R. Stumberg, "Safeguards for tobacco control: options for the TPPA", *American Journal of Law and Medicine*, vol. 39, Nos. 2 and 3 (2013), pp. 382-441. TPPA stands for Trans-Pacific Partnership Agreement.

[34] www.acwl.ch/e/disputes/tech_exp_fund.html.

[35] www.citizen.org/documents/NAFTAReport_Final.pdf.

[36] http://corporateeurope.org/international-trade/2014/04/still-not-loving-isds-10-reasons-oppose-investors-super-rights-eu-trade.

[37] Ibid.

C. Dubious impartiality of investor-State dispute settlement tribunals

47. Critics of investor-State dispute settlement have pointed out that many arbitrators and corporations are "too close for comfort". A glaring example of the dysfunction of the annulment procedure for conflict of interests is provided by *Vivendi v. Argentina*.[38]

48. Argentina stated that one of the arbitrators, Gabrielle Kaufmann-Kohler, was acting as a member of the Board of Directors and a member of the Corporate Responsibility Committee of the Swiss bank UBS, which was the single largest shareholder in Vivendi. Argentina further argued that Ms. Kaufmann-Kohler was partially remunerated with UBS shares. While Argentina acknowledged that any issues regarding the ability of an arbitrator should be raised without delay during the arbitration proceeding, in this case it was not possible to do so because Argentina only learned about the facts and circumstances affecting her ability to serve as arbitrator in November 2007, after the award judgement of 20 August 2007 had been rendered. While the review committee was critical of the arbitrator's judgement and agreed with Argentina that the tribunal was not properly constituted and that annulment under article 52 (1) (a) of the Convention on the Settlement of Investment Disputes Between States and Nations of Other States could be supported, it declined to annul the award, holding that (a) the arbitrator's exercise of independent judgement was not actually impaired; (b) it would be unjust to deny the claimants the benefit of the award owing to the arbitrator's failures; and (c) the lengthy proceedings should "come to an end". This case, adjudicated by the International Centre for Settlement of Investment Disputes, illustrates that the International Centre's rules are insufficient to deal with conflicts of interest.

49. Under the current annulment procedure of the International Centre for Settlement of Investment Disputes, even ill-founded arbitral awards cannot be reversed. A review of the merits is not allowed; review is limited to grounds, such as irregular constitution or corruption of the arbitral tribunal, serious departure from a fundamental rule of procedure, failure to state reasons for the award or a manifest abuse of power. Hence, the International Centre annulment committee may find itself unable to annul or correct an award even after having identified "manifest errors of law".[39]

50. To counter investor-State dispute settlement abuse, domestic courts should deny enforcement of awards when such enforcement would be contrary to the public policy of their countries. This "public policy exception" to the enforcement of arbitral awards is found in article V (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention) and the Model Law on International Commercial Arbitration, 1985 of the United Nations Commission on International Trade Law (UNCITRAL).[40] Regulations and ethical codes of conduct should be activated against investor-State dispute settlement abuses[41] to remove the impunity hitherto enjoyed by investor-State dispute

[38] www.italaw.com/documents/VivendiSecondAnnulmentDecision.pdf.

[39] UNCTAD, *World Investment Report 2015*, p. 180.

[40] Winnie Ma, "Public policy in the judicial enforcement of arbitral awards", thesis submitted for the degree of Doctor of Juridical Science, Bond University, Australia, 2005.

[41] C. Olivet and P. Eberhardt, *Profiting from Crisis: How Corporations and Lawyers are Scavenging Profits from Europe's Crisis Countries* (Amsterdam/Brussels, Transnational Institute and Corporate Europe Observatory, 2014). See also www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy.

settlement. Lawyers who are found to have benefited directly or indirectly from the awards rendered, for example, when they are subsequently hired by the very investors they represented, should be investigated and, if necessary, disbarred. Investigations for breaches of ethical conduct should be systematically conducted into the activities of law firms and arbitrators under established rules on conflict of interest and conspiracy.

51. International investment agreements must undoubtedly be revisited to ensure that they are compatible with modern international law, in particular that they acknowledge the pre-eminence of the Charter of the United Nations pursuant to Article 103. The conclusion is inescapable that while international investment agreements can be reformed in a way that will further human rights and sustainable development, investor-State dispute settlement arbitral tribunals are ontologically and conceptually flawed and fail the test of compatibility with the Charter and human rights norms. Lessons learned over the past decades indicate that "good practices" in investor-State dispute settlement experience are few and far between and that the harm caused by the investor-State dispute settlement system justifies its abolition. A further question arises concerning the criminal responsibility of investors and transnational corporations when their activities cause serious harm to the environment, pollute water supplies, endanger public health, destroy food security or result in mass transfer of populations, for example, in connection with "mega-development" projects, sometimes accompanied by violence and death. International criminal law in this field is gradually emerging.[42] Until now, investor-State dispute settlement has seemed blithely immune to such considerations.

52. The most fundamental argument against investor-State dispute settlement is that it subverts the rule of law so laboriously constructed over the past two hundred years by attempting to privatize justice. The establishment of a parallel system of dispute settlement, which is not transparent, accountable or even independent, cannot be tolerated. Moreover, no injustice is done to investors, because they have valid recourse options and can always rely on a functioning domestic administration of justice and/or on diplomatic protection.

[42] www.chathamhouse.org/event/corporate-responsibility-international-crimes. www.chathamhouse.org/sites/files/chathamhouse/field/field_publication_docs/INTA91_1_03_Ainleypdf. At an important conference held at the International Law Department of the University of Jaén, Spain, from 20 to 24 July 2015 on issues of economic crimes and universal jurisdiction, including a panel entitled "Crimenes económicos y financieros" moderated by Judge Baltasar Garzón and Professor Carmen Márquez, participants agreed that some economic crimes have consequences such that subjecting them to universal jurisdiction is justified. See also C. Wells, *Corporations and Criminal Responsibility*, 2nd ed. (Oxford University Press, 2002). L. Kaplan, "Some reflections on corporate criminal responsibility", address before the New York State Bar Association, 24 January 2007. Madrid Principles on Universal Jurisdiction, available from https://ujprinciples.wordpress.com/principles/.

V. Outlook

53. "Investment arbitration as currently constituted is not a fair, independent, and balanced method for the resolution of disputes between sovereign nations and private investors."[43]

54. The UNCTAD "action menu" laid out in the *World Investment Report 2015* presents several reform options, but stops short of recommending abolition of investor-State dispute settment. The Independent Expert strongly believes that maintaining investor-State dispute settment is not an option and concludes that it should be abolished as a fundamentally flawed system having adverse human rights impacts and because its operation has upset the international order by debilitating States, encroaching on their regulatory space and aggravating inequality and inequity in the world. A history of abuse by arbitrators and interpretative practices well beyond articles 31 and 32 of the Vienna Convention on the Law of Treaties vitiates the system. Repeated findings by United Nations bodies notwithstanding, including the 2003 report of the Subcommission and the reports of several special procedures mandate holders,[44] have remained without effect, since the arbitrators have continued their practice of extensive interpretations and disregard of the human rights impacts. On the basis of the doctrine of abuse of rights and the prohibition of *contra bonos mores* agreements, investor-State dispute settlement should be abolished together with the "survival clauses", which provide for the continued application of treaties after their termination. This can be done pursuant to the doctrine of severability without abandoning the entire international investment agreements.

55. Investor-State dispute settlement could be replaced by any of the following options, or a combination thereof:

(a) The creation of an international investment court where the judges would be bound not only to take into account, but to give priority to the Charter and the core United Nations human rights treaties; a court that would have competence to examine suits brought by investors against States and by States against investors and that would allow mutual counter-claims. A standing international investment court, it would replace the system of multiple ad hoc arbitral tribunals with a single institutional structure. The court would be established by treaty and could have some institutional relationship with the United Nations, as do the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court. The court could even be incorporated into the United Nations system pursuant to articles 57 and 63 of the Charter as, for instance, a yet-to-be-created world court on human rights or a world court on the environment. The judges would be appointed or elected by States on a

[43] Quoted in http://works.bepress.com/matthew_rimmer/178/ and reflected in an open letter signed by 100 leading professors, judges and lawyers from Trans-Pacific Partnership countries, including Justice Elizabeth Evatt, former member of the Human Rights Committee, urging the rejection of investor-State dispute settlement. Available from https://tpplegal.wordpress.com/open-letter/.

[44] A/69/299, A/HRC/19/59/Add.5, A/HRC/25/57 and the forthcoming reports of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, and the Special Rapporteur on the rights of indigenous peoples to the General Assembly at its present session.

permanent basis. Most importantly, the international investment court would have an appeals chamber;

(b) A State-State dispute settlement mechanism similar to that of WTO. Under this procedure the home State would have discretion over whether to bring a claim and States would decide on the court that should hear the case, for example, the International Court of Justice or ad hoc tribunals with appeal chambers;

(c) Exclusive reliance on domestic dispute resolution. This option would abolish the right of investors to bring claims against host States in international tribunals and direct them to the jurisdiction of the States where they are operating and making a profit. This is the essence of the Calvo doctrine.[45]

56. The Independent Expert endorses the conclusions of the Special Rapporteur on the right to health contained in his previous report to the General Assembly, in particular his finding that although international investment agreements may contribute to the economic development of a country, States must ensure that protection of human rights, including the right to health, is incorporated into those agreements:

> ... Human rights must be respected, protected and fulfilled at all times, and should be the primary concern of all action by States. International investment agreements should therefore expressly provide for States' human rights obligations, which should be able to override investors' rights in specific cases.
>
> The ability of individuals to enjoy their right to health cannot be subject to contractual rights of investors, given that the right to health is fundamental to the dignity of individuals (A/69/299, paras. 57-58).

57. The Independent Expert endorses the Special Rapporteur's finding that:

> The magnitude of violations by transnational corporations and the ease with which they can evade responsibility for such violations call for an international mechanism to hold them liable for human rights abuses. Such a mechanism should supplement domestic laws rather than diminish the importance of domestic law. The mechanism should therefore enable States and individuals to hold transnational corporations to account for their human rights violation (ibid., para. 38).

58. The Independent Expert concludes that the abolition of investor-State dispute settlement does no injustice to investors, who can still avail themselves of the domestic courts and/or the well-tried mechanism of diplomatic protection. In addition, the World Bank offers risk insurance, and this should be factored in as a normal cost of doing business. Notwithstanding the imposition of some necessary limits on the hybrid dogmas of market fundamentalism and the doxology of free trade, investors will continue making handsome profits and, precisely by accepting the principles of transparency, accountability and other reasonable public-oriented regulations, they ensure the continuation of a healthy system of free markets accompanied by sustainable development.

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[45] P. Juillard, "Calvo Doctrine/Calvo Clause", in Wolfrum, pp. 1086-1093 (2012). See also International Law Commission, "Third report on diplomatic protection by John Dugard, Special Rapporteur" (2002) (A/CN.4/523/Add.1); C. Dalrymple, "Politics and foreign direct investment: the Multilateral Investment Guarantee Agency and the Calvo Clause", *Cornell International Law Journal*, vol. 29, No. 1 (1996), pp. 1161-1189.

VI. Recommendations

59. **In the light of the obstacles to a democratic and equitable international order outlined above, the Independent Expert refers to the Plan of Action he formulated in his report to the Human Rights Council (A/HRC/30/44, sect. VII) and offers further recommendations.**

A. To States

60. **States should abolish the investor-State dispute settlement system and replace it with an international investment court, State-to-State settlement before the International Court of Justice or by domestic courts bound by article 14 of the International Covenant on Civil and Political Rights.**

61. **States should endeavour to modify or terminate existing international investment agreements and refrain from entering international investment agreements with investor-State dispute settlement provisions. Before entering any new international investment agreements, States should ensure that independent ex ante human rights, health and environmental impact assessments are conducted. Provision for ex post assessments should be made.**

62. **States should use domestic and international law, including penal law, to suppress economic crimes and financial and banking speculation, apply and strengthen the precautionary principle in the protection of public health and the environment and rigorously enforce environmental and health standards.**

63. **States should impose penal sanctions on white-collar crimes and corruption. They should ratify the United Nations Convention against Corruption.**

64. **States should finish the elaboration of and adopt a legally binding convention that covers corporate social responsibilities and strengthens the implementation of the Guiding Principles on Business and Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples.**

65. **Until investor-State dispute settlement is abolished, States should establish a fund for the defence of investor-State dispute settlement cases modelled on the WTO Advisory Centre on WTO Law.**

B. To the General Assembly

66. **The General Assembly may consider inviting UNCTAD to convene a conference to revise or terminate international investment agreements that have resulted in human rights violations.**

67. **The General Assembly may consider tasking the Human Rights Council with a specific mandate on periodic monitoring of the adverse impacts of the international investment regime on the enjoyment of civil, cultural, economic, political and social rights, for example by expanding the scope of examination under the universal periodic review.**

68. The General Assembly may consider ways to put into effect the ILO and World Bank initiative for universal social protection[46] and provide for adequate financing thereof.

69. The General Assembly may consider establishing a commission to monitor the impact of arbitral awards on the paramount obligation of States to promote and protect human rights.

70. Bearing in mind that the International Court of Justice, as the highest judicial body of the United Nations can render an authoritative legal statement on international investment agreements, including investor-State dispute settlement, the General Assembly may, pursuant to article 96 of the Charter, request an advisory opinion on:

(a) The legal consequences of the priority of the Charter over all other treaties, pursuant to its Article 103, in particular with regard to international investment agreements and investor-State dispute settlement awards;

(b) The priority of the international human rights regime, including the International Covenants as well as FAO, ILO, UNICEF and WHO conventions, over conflicting obligations under trade and investment agreements;

(c) The application of norms of customary international law to non-State actors, in particular the respect for the sovereignty and independence of States and the prohibition of interference in matters that are essentially within the domestic jurisdiction of States;

(d) The responsibility of a home or host State for the actions of a transnational corporation registered or operating in its territory;

(e) The scope of State sovereignty and the ontological obligation of every State to legislate and regulate for the welfare of the population, in particular the obligation of States pursuant to the international human rights treaties not to regress in human rights protection and not to allow external actors to dictate their fiscal, budgetary, social, labour, health, educational or environmental policies;

(f) The application of article 53 of the Vienna Convention on the Law of Treaties to investment agreements that contain provisions that are *contra bonos mores* or violate *jus cogens*;

(g) The legal status of privatized systems of justice that are not transparent or accountable nor subject to appeal, especially in the light of article 14 (1) of the International Covenant on Civil and Political Rights; the compatibility of investor-State dispute settlement tribunals with the principle of the rule of law; the obligation of investor-State dispute settlement arbitrators to take international human rights treaties into account;

(h) The validity of investor-State dispute settlement awards, the necessity of appealability and the consequences of *ex tunc* invalidity;

(i) The primacy of State sovereignty over arbitral tribunals and the right of sovereign States to refuse to execute arbitral awards that entail violations of human rights;

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[46] www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_378984/lang--en/index.htm.

(j) **The right of third States to refuse execution of arbitral awards that are *contra bonos mores*, notwithstanding the Convention on the Recognition and Enforcement of Foreign Arbitral Awards;**

(k) **The obligation of States to modify or terminate international investment agreements that have led to or are likely to lead to violations of human rights;**

(l) **The modalities of modification or termination of bilateral and multilateral free trade and investment agreements, pursuant to the Vienna Convention on the Law of Treaties, and the application of the principle of severability;**

(m) **The responsibility of State courts to investigate corruption and collusion in connection with the operation of investor-State dispute settlement and to impose punitive damages on investors who engage in frivolous and vexatious litigation against the State's regulatory competences.**

C. To transnational enterprises

71. **In the interrelated and interdependent world of the twenty-first century, plagued as it is by extreme poverty and where population growth announces threats to food security and the environment, energy scarcity, etc., international solidarity should engender concrete action. Enterprises should spend more of their profits for the promotion of human rights in the countries where they operate. They should take all necessary measures to ensure that their activities do not damage the environment, pollute, limit access to generic medicine, etc. They should comply with national and international regulation whereby the public must be informed of the dangers of tobacco consumption, genetically modified organisms, waste disposal, water pollution, etc.**

72. **Transnational enterprises that are adversely affected by unilateral sanctions condemned by the General Assembly and the Human Rights Council should test their validity before the WTO dispute settlement mechanism, UNCITRAL or the International Centre for Settlement of Investment Disputes and/or invoke pertinent clauses in existing friendship, commerce and navigation treaties to refer disputes to the International Court of Justice.**

D. To civil society

73. **Considering the grave democratic deficits of international investment agreements, in particular the secrecy of their elaboration and negotiation, the exclusion of key stakeholders and the adverse human rights impacts of international investment agreements and investor-State dispute settlement, civil society should demand that public referendums be held on all future international investment agreements, including bilateral investment treaties, the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership and the Trade in Services Agreement, and that referendums be organized concerning the urgent revision or termination of existing international investment agreements, including NAFTA and the Central America Free Trade Agreement (CAFTA).**

74. **Individuals and groups should submit cases of human rights violations caused by the application of international investment agreements to regional human rights courts and denounce them in the social media.**

75. **Civil society should demand the expansion of the concept of crimes against humanity to encompass economic crimes that entail the destruction of ecosystems or grave financial dislocations through manipulation of commodity markets or currency speculation resulting in the gravest consequences for millions of people.**

VII. Postscript

76. **The Independent Expert is grateful that enhanced recognition of the mandate is leading to increased input from Governments, inter-governmental organizations, civil society and academia. He welcomes contact with stakeholders from all related fields and looks forward to engaging with them in the upcoming reporting year.**

77. **By way of conclusion, the Independent Expert would like to reiterate his expression of appreciation to the very hard-working and competent staff, of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and requests the General Assembly to allocate greater resources to the Office.**

78. **The Independent Expert concludes with a note of optimism about the possibility of building, with good will and international solidarity, a peaceful, democratic and equitable international order. Major obstacles must be overcome, including the mythologies and fundamentalisms of the market. A sober analysis was given at the Ninth WTO Ministerial Conference, held in Bali, Indonesia, in December 2013, by Archbishop Silvano Tomasi on behalf of the Holy See:**

> **While a minority is experiencing exponential growth in wealth, the gap is widening to separate the vast majority from the prosperity enjoyed by those happy few. This imbalance is the result of ideologies that defend the absolute autonomy of the marketplace and of financial speculation. Consequently, there is an outright rejection of the right of States, charged with vigilance for the common good, to exercise any form of control. A new tyranny is thus born, invisible and often virtual, which unilaterally and relentlessly imposes its own laws and rules. An even worse development is that such policies are sometimes locked in through trade rules negotiated at the WTO or in bilateral or regional [free trade agreements]. Debt and the accumulation of interest also make it difficult for countries to realize the potential of their own economies and keep citizens from enjoying their real purchasing power. To all this, we can add widespread corruption and self-serving tax evasion, which have taken on worldwide dimensions. The thirst for power and possessions knows no limits. In this system, which tends to devour everything which stands in the way of increased profits, whatever is fragile, like the environment, is defenceless before the interests of a deified market, which become the only rule.**[47]

[47] www.wto.org/english/thewto_e/minist_e/mc9_e/stat_e/vat.pdf.

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Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Elimination of all forms of religious intolerance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, submitted in accordance with General Assembly resolution 69/175.

* A/70/150.

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Interim report of the Special Rapporteur on freedom of religion or belief

Summary

In the present report, the Special Rapporteur on freedom of religion or belief provides an overview of his activities under the mandate since the submission of his previous report to the General Assembly (A/69/261).

Thematically, the report focuses on the rights of the child and his or her parents in the area of freedom of religion or belief. Article 14 of the Convention on the Rights of the Child, which recognizes the child as a rights holder of freedom of religion or belief, should be understood in continuity with all other international standards of freedom of religion or belief, including article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. Parents have the rights and duties to provide direction to the child in the exercise of his or her freedom of religion or belief in a manner consistent with the evolving capacities of the child.

In terms of practical application, the Special Rapporteur discusses issues related to religious socialization; religious instruction within the family; participation in religious community life; religious education in schools; the voluntary display of religious symbols in schools; respect for the evolving capacities of the maturing child; and non-discrimination on the basis of religion or belief. With regard to possible conflicts, the Special Rapporteur stresses the need for diligence when dealing with conflicting human rights concerns, ensuring non-discriminatory family laws and the settlement of family-related conflicts, combating harmful practices and dealing appropriately with controversies around male circumcision. Lastly, the Special Rapporteur addresses recommendations to States and other stakeholders, including religious communities and families.

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I. Introduction

1. The Commission on Human Rights created the mandate of the Special Rapporteur on freedom of religion or belief in resolution 1986/20. In 2007 and 2010 the Human Rights Council renewed the mandate in resolutions 6/37 and 14/11 and in 2013 the Council extended the mandate for a further period of three years in resolution 22/20.

2. The General Assembly, in its resolution 69/175, recognized with concern the situation of persons in vulnerable situations, including children, as regards their ability to freely exercise their right to freedom of religion or belief. It also referred to the need to address urgently situations of violence and discrimination that affect many individuals, particularly women and children, on the basis or in the name of religion or belief, or in accordance with cultural and traditional practices.

3. In section II of the present report, the Special Rapporteur provides an overview of his activities since the submission of his previous report to the General Assembly (A/69/261). In section III, he focuses on the rights of the child and his or her parents in the area of freedom of religion or belief. In section IV he sets out his thematic conclusions and recommendations.

II. Activities of the Special Rapporteur

4. The Special Rapporteur conducted various activities between 1 August 2014 and 31 July 2015, pursuant to Human Rights Council resolutions 6/37, 14/11 and 22/20.

5. He presented his annual reports to the sixty-ninth session of the General Assembly in October 2014 and to the twenty-eighth session of the Human Rights Council in March 2015, where he also participated in side events and held bilateral meetings.

6. He undertook a country visit to Lebanon from 23 March to 2 April 2015 and will present his report on the mission to the thirty-first session of the Human Rights Council.

7. The Special Rapporteur sent communications to Governments through urgent appeals, allegation letters and other letters. The latest communications reports (A/HRC/27/72, A/HRC/28/85 and A/HRC/29/50) include all communications sent between 1 March 2014 and 28 February 2015 and the replies received from Governments before 30 April 2015. He also made public statements and gave various interviews.

8. In November 2014, the Special Rapporteur participated in a meeting of the International Panel of Parliamentarians for Freedom of Religion or Belief, held in Oslo, where parliamentarians from 17 countries signed the Charter for Freedom of Religion or Belief.[1]

9. On 4 December 2014, the Special Rapporteur met again with Cypriot religious leaders at the second interreligious round table convened by the Office of the Religious Track of the Cyprus Peace Process under the auspices of the Embassy of

[1] Available from ippforb.com/charter-for-freedom-of-religion-or-belief/.

Sweden, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

10. During the reporting period, the Special Rapporteur gave numerous lectures and took part in many panel discussions. On 8 January 2015, he delivered a speech on national identity and freedom of religion or belief in Athens and on 15 and 16 January, he spoke on various non-discrimination dimensions of freedom of religion or belief in Luxembourg. From 9 to 11 February 2015, he took part in a conference at Wilton Park on the theme of "Developing a multilateral approach to freedom of religion or belief". On 14 March 2015, he attended the twelfth national peace symposium hosted by the Ahmadiyya Muslim community in London. On 8 June 2015, he delivered a speech in Strasbourg, at a high-level seminar of the Council of Europe on the theme of "Building inclusive societies together". He also took part in in a panel on the theme of "Dialogue on freedom of religion and gender-related rights" in Geneva on 18 June 2015, at which he stressed the importance of integrating a gender perspective into programmes designed to protect and promote freedom of religion or belief.

11. In addition, the Special Rapporteur took part in the fifth conference within the Istanbul Process on the theme of "From resolution to realization — how to promote effective implementation of Human Rights Council resolution 16/18", organized by the Organization of Islamic Cooperation on 3 and 4 June 2015 in Jeddah, Saudi Arabia.

III. The rights of the child and his or her parents in the area of freedom of religion or belief

12. Violations of freedom of religion or belief often affect the rights of children and their parents. An extreme example is the abduction of children, typically girls, from religious minorities in order to convert them forcibly to another religion, frequently in combination with a forced early marriage. In some countries such crimes occur in a climate of impunity. While it massively violates a number of the rights of the affected child, including freedom of religion or belief, freedom from discrimination on the basis of sex or gender, the right to physical and psychological integrity and the right of the child to be cared for by his or her own parents, it simultaneously violates the rights of the parents, including the right to ensure a religious and moral education of the child in conformity with their own convictions.

13. Sometimes, violations are also directly committed by State agencies. For instance, in some countries, converts away from mainstream religions risk losing the right to have custody of their children. Depending on the specificities of the case, that may amount to a simultaneous violation of parental rights and the rights of the children. Another field requiring attention in that regard is education in school. Pressure exercised on children in schools, for instance with the purpose of alienating them from their religion or beliefs, may again simultaneously violate the rights of the child and the rights of his or her parents. In many such cases, the rights of persons belonging to religious minorities may additionally be at stake.

14. While in many situations of violations the rights of the child and the rights of his or her parents may be affected in conjunction, it is not always the case. Every individual child is a rights holder in his or her own capacity, not just through

membership in a family or community. Moreover, the interests of parents and children are not necessarily identical, including in the area of freedom of religion or belief. There can be situations in which the rights of the child must be safeguarded also against his or her parents. One example is the infliction of harmful practices, such as female genital mutilation or child marriage, sometimes carried out in the name of culture, tradition or religion. When designing policies against harmful practices, States should bear in mind that such practices are usually contested between and within religious communities. Awareness of such internal diversity is important, to avoid stigmatizing overgeneralizations and muster support from within religious communities when combating harmful practices.

A. Legal framework

15. When exploring the complex relationship between the rights of children and their parents in the area of freedom of religion or belief, all relevant international human rights instruments must be taken into account, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, as adopted in General Assembly resolution 36/55 (the 1981 Declaration), and the Convention on the Rights of the Child. The following observations start with an interpretation of the most recent comprehensive convention in this regard, the Convention on the Rights of the Child, which in its article 14 enshrines the right of the child to freedom of thought, conscience and religion, while also addressing the rights and duties of parents or legal guardians to provide direction to the child in the exercise of his or her freedom of religion or belief, in a manner consistent with the evolving capacities of the child.

1. The child as rights holder

16. The Convention on the Rights of the Child highlights the status of the child as a rights holder in the framework of human rights. That is not entirely new. The Universal Declaration of Human Rights recognized "the inherent dignity and ... the equal and inalienable rights of all members of the human family", thus using a formulation that at least implicitly includes children. However, the Convention on the Rights of the Child renders that status explicit and draws out practical consequences with regard to the particular needs, interests, vulnerabilities and capabilities of the child. That is all the more important in view of attitudes, customs, norms and practices that are unfortunately still widespread, whereby children are treated as if they were the property of their parents, families or communities, without having rights in their own capacity.

17. The Convention on the Rights of the Child enshrines a broad range of human rights to which every child is entitled. Article 14 must be interpreted in the broader context of corroborating the status of the child as a rights holder. Its first paragraph states that: "States parties shall respect the right of the child to freedom of thought, conscience and religion."

18. Freedom of religion or belief has a wide scope of application. In its general comment No. 22 (1993) on freedom of thought conscience or religion, the Human Rights Committee stated that article 18 of the International Covenant on Civil and Political Rights "protects theistic, non-theistic and atheistic beliefs, as well as the

right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed". That inclusive understanding of article 18 of the Covenant must also guide interpretation of article 14 of the Convention on the Rights of the Child. Accordingly, the status of the child as a rights holder in the area of freedom of religion or belief deserves respect across the whole range of diverse faith orientations. It furthermore covers followers of traditional religions or beliefs, as well as of newly established religious movements.

19. The Convention on the Rights of the Child also includes a provision on behalf of children who belong to ethnic, religious or linguistic minorities. The wording of article 30 of the Convention resembles article 27 of the International Covenant on Civil and Political Rights, with the remarkable exception that the Convention includes "persons of indigenous origin". With regard to a child from a religious minority or of indigenous origin, article 30 of the Convention on the Rights of the Child confirms the child's right to "profess and practise his or her religion" and to do so "in community with other members of his or her group". While the community dimension is clearly acknowledged, the immediate rights holder remains the individual child who belongs to a religious minority or indigenous community.

2. The role of parents

20. While recognizing the status of the child as a rights holder, the Convention on the Rights of the Child also reflects the awareness that the child needs a supportive environment to realize his or her rights. That supportive environment is usually provided by the family. According to the preamble of the Convention, the child "should grow up in a family environment", since the family provides "the natural environment for the growth and well-being of all its members and particularly children".

21. From that insight into the significance of the family, the Convention derives a number of rights, which protect the relationship between children and their parents or legal guardians. Article 7, paragraph 1, emphasizes that the child shall have "the right to know and be cared for by his or her parents". Article 9, paragraph 1, obliges States to "ensure that a child shall not be separated from his or her parents against their will", except in clearly defined exceptional situations, which furthermore must be carefully assessed under principles of due process and connected to effective remedies. Even in such exceptional situations, States "shall respect the right of the child who is separated from one or both parents to maintain personal relations", unless this would clearly go contrary to the child's best interests. Article 18, paragraph 1, furthermore provides that "States parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibility for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." While that is formulated from the perspective of the child, it necessarily also corroborates the specific rights and duties of parents.

22. Given the child's dependency on an enabling family environment, albeit with recognition of the variety of family forms, parents have the primary responsibility for supporting the child in the exercise of his or her human rights. According to article 5 of the Convention on the Rights of the Child, they should provide "appropriate guidance and direction" to the child in that regard. That specific

responsibility entrusted to the parents also constitutes a parental right that the State must respect and protect. Article 14, paragraph 2, of the Convention further specifies that general understanding by enshrining due respect for the rights and duties of the parents "to provide direction to the child in the exercise of his or her right" to freedom of religion or belief.

3. Due respect for the "evolving capacities of the child"

23. The status of each individual child as a rights holder and his or her reliance on support usually provided by the family must be seen in conjunction. On the one hand, the rights of the child can never flourish without an enabling environment. On the other hand, the need of the child for an enabling environment must not lead to the wrong conclusion that parents or other family members can simply override, ignore or marginalize the rights of the child. The status of the child as rights holder must always be respected and should, inter alia, be reflected in the manner in which parents provide guidance and direction to the child. The decisive term employed in the Convention on the Rights of the Child is "the evolving capacities of the child".[2]

24. Article 5 of the Convention, which is central for the understanding of the entire Convention, defines the complex and dynamic relationship between the rights of the child and parental rights and duties as follows: "States parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

25. Adequate consideration of "the evolving capacities of the child" presupposes that the child, once capable of forming personal views, can express such views freely, with a chance of being heard and taken seriously. Article 12, paragraph 1, of the Convention confirms that right, while furthermore requiring that the views of the child be "given due weight in accordance with the age and maturity of the child". Thus, the child should in the course of time assume a more and more active position in the exercise of his or her rights.

26. Article 14 of the Convention reflects and further specifies the general understanding of the dynamic interrelatedness of the rights of the child and his or her parents. While paragraph 1 confirms the status of the child as a rights holder as regards freedom of thought, conscience and religion, paragraph 2 demands respect for "the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". That wording bears a striking resemblance to article 5 of the Convention. In fact, article 14, paragraph 2, is the only provision in the Convention that reiterates the importance of the evolving capacities of the child. It means that the child should always be respected, including within the family, as having the gradually evolving capacities of forming his or her own thoughts, ideas and religious or belief-related convictions and taking his or her own decisions in that area. In article 14, paragraph 3, the limitation clause already

[2] See also United Nations Children's Fund, "The evolving capacities of the child" (2005). Available from www.unicef-irc.org/publications/384.

contained in article 18, paragraph 3, of the International Covenant on Civil and Political Rights is reiterated.

B. The interrelatedness of the rights of the child to freedom of religion or belief and parental rights

27. The relationship between the rights of the child and parental rights in the area of freedom of religion or belief has given rise to controversies. On the one hand, fears have been expressed that the status of the child as a rights holder might undermine parental rights, thus opening the floodgates for far-reaching interference by State agencies in the religious socialization of children. On the other hand, there exist views that parents should be obliged to provide a religiously "neutral" upbringing of their children. With the following clarifications, the Special Rapporteur would like to contribute to a holistic understanding of the rights of the child and parental rights in their normative interrelatedness, without ignoring possible conflicts.

1. No legitimate pretext for eroding parental rights

28. Some critics of article 14 of the Convention on the Rights of the Child have voiced concerns that the explicit recognition of the child's freedom of religion or belief in the Convention might lead to an erosion of parental rights and undermine the specific responsibility that parents have in the religious socialization of their children. That has been among the reasons for some States entering reservations or explanatory declarations concerning article 14 when ratifying or acceding to the Convention. The Special Rapporteur is convinced that such anxieties cannot be sustained on the basis of an appropriate reading of the Convention, seen in conjunction with other relevant international standards.

29. Fears that some State agencies could be tempted to use the child's right to freedom of religion or belief as a pretext for undue interference are generally understandable. As a matter of fact, in some countries, far-reaching State interventions into families in the spheres of religious initiation, socialization and education of children actually do occur — at times also by invoking an alleged interest of the child. Such problematic State interventions disproportionately affect families belonging to religious minorities, new religious movements or small communities often stigmatized as "sects". Depending on the country, families not professing any religion may also be under increased threat of undue State interference. In extreme cases, children have been taken away from their families, for instance under the pretext of saving them from ill-defined "superstitious" religions — a pretext often invoked against indigenous families in the past.

30. Converts constitute another particularly vulnerable group. In particular, in States that privilege a certain religion as the official or State religion, parents converting away from that hegemonic religion run the risk of being alienated or even separated from their children. Possibly starting with adverse comments by teachers in kindergartens and schools, such alienation can climax in a formal loss of custody rights, for instance when a divorce takes place. Official documents issued for children do not always reflect the new religious orientation of parents after conversion, thus leading to different religions being ascribed to the parents and the children, often against the explicit will of both.

31. Thus, there can be no doubt that the erosion of parental rights by undue State interference is a serious problem and a source of grave violations of freedom of religion or belief. That problem requires systematic attention. It is furthermore true that some States may use the rhetoric of superficial child rights in an attempt to "justify" such interference. However, based on an appropriate understanding of the Convention on the Rights of the Child, the fear that article 14 of the Convention could legitimize the erosion of parental rights seems unsubstantiated. Instead of being part of the problem, the Convention can and should be part of the solution. In conjunction with other human rights instruments, article 14 can help to tackle the problem of abusive State interventions. Rather than eroding parental rights in the sphere of freedom of religion or belief, article 14 corroborates, and at the same time further qualifies, those rights by acknowledging their significance from the specific perspective of the rights of the child. Moreover, the Convention gives the child, his or her parents and other family members a strong position in pursuing their human rights-based interests. When it comes to families belonging to religious minorities, article 30 of the Convention can be used in combination with article 14 in order to strengthen further the claims of persons belonging to minorities against unjustified interventions.

32. Earlier provisions of freedom of religion or belief remain fully valid. That includes article 18, paragraph 4, of the International Covenant on Civil and Political Rights which provides that the States parties "undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."[3] Whereas the International Covenant on Civil and Political Rights focuses on the rights of parents, the Convention on the Rights of the Child combines parental rights and the rights of the child to freedom of religion or belief.[4] That reflects an increased awareness, manifested in the Convention, of the status of the child as a rights holder.

33. While article 18, paragraph 4, of the Covenant should be interpreted in the light of the Convention, with its explicit focus on the interrelatedness of parental and child rights, article 14, paragraph 2, of the Convention should, vice versa, be seen in continuity with article 18, paragraph 4, of the Covenant, which remains fully valid. Indeed, the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions continues to constitute a human-rights based claim which is far from redundant, since the parental right to provide "direction" to the child in his or her exercise of freedom of religion or belief includes the religious socialization of the child, albeit neither in an unchangeable way nor in a manner inconsistent with the evolving capacities of the child.

34. In practice, the right of the child to freedom of religion or belief and parental rights to provide direction to the child in that regard should be seen as largely, although not always, consonant. The Convention on the Rights of the Child operates on the assumption that parents serve as the natural custodians of the best interests of

[3] See also similar wording in article 13, para. 3, of the International Covenant on Economic, Social and Cultural Rights and article 12, para. 4, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[4] See also article 5, para. 2, of the 1981 Declaration, which more narrowly focuses on access to education in matters of religion or belief. In that context, the Declaration refers to parental rights and the best interests of the child.

the child, as enshrined in article 3, paragraphs 1 and 2, and that the child has a natural interest in living in a family together with his or her parents. That does not preclude conflicts of interests, in particular when the child grows up and tries to become more independent. Moreover, situations may emerge in which the best interests of the child may actually require State interventions to protect him or her, for example against neglect, domestic violence or harmful practices. Intervening measures must always be carried out with empirical and normative diligence and furthermore they are connected to substantive and procedural safeguards.[5]

2. No obligation to provide a religiously "neutral" upbringing

35. Other critics have questioned the provisions of the Convention on the Rights of the Child from the opposite angle by contending that it allegedly gives too much weight to parental rights, in particular in the context of freedom of religion or belief. In order for the child to fully retain the right to free choice in questions of religion or belief, it has been argued that parents should not be allowed to determine the child's religious identity by initiating the child into any particular religion. The idea seems to be that the child should rather grow up in a more or less religiously "neutral" environment, in order to preserve all options of his or her future self-determination. Sometimes such demands are presented in the name of the child's "right to an open future".[6]

36. Freedom of religion or belief indeed facilitates an open development by guaranteeing everyone's freedom to "change" one's religion or belief[7] and to "have or to adopt a religion or belief of his choice".[8] In the course of their personal development, individuals, including children, can modify, change or even abandon their religion or belief. However, that does not presuppose a right of the child to grow up in a religiously "neutral" family environment, let alone a right possibly enforced by the State against parents. The principle of "neutrality" can meaningfully be invoked only against States in order to remind them of their obligation to exercise fairness, impartiality and inclusivity and in this specific sense "neutrality", when dealing with diversity of religion or belief. By contrast, parents cannot be obliged by the State to remain religiously "neutral" when raising their children.

37. Some parents may take a deliberate decision not to socialize their children in a religious manner. Of course, such a decision must be respected as falling within their parental rights, however, that cannot serve as the general model to be promoted, let alone enforced, by the State. Attempts made by the State to enforce a religiously "neutral" upbringing of children within their families would amount to a far-reaching violation of parental rights to freedom of religion or belief, as enshrined, inter alia, in article 14, paragraph 2, of the Convention on the Rights of the Child.

38. For many believers, religion represents an all-encompassing reality which permeates all spheres of life. Religious rituals and ceremonies may thus be involved

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[5] For details see below, section III.D.

[6] In that regard, reference is often made to an emblematic article by Joel Feinberg, "The child's right to an open future" in *Whose Child? Children's Rights, Parental Authority, and State Power*, William Aiken and Hugh LaFollette, eds. (Totowa, New Jersey, Rowman and Littlefield, 1980).

[7] Article 18 of the Universal Declaration of Human Rights explicitly refers to "freedom to change his religion or belief".

[8] See article 18, paras. 1 and 2, of the International Covenant on Civil and Political Rights.

when parents welcome newborn children as members of the family and the larger community, when they familiarize children with their religious lifeworld, or when they teach them the basic rules of interaction, ethical principles and how to perform prayers and religious ceremonies. Freedom of religion or belief protects such religious socialization processes broadly, as part of the right to manifest one's religion or belief "in worship, observance, practice and teaching".[9] Here again, article 14 of the Convention on the Rights of the Child must be seen in continuity with other provisions of freedom of religion or belief, as enshrined in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and other international instruments.

C. Dimensions of practical application

39. The requirement to respect the "evolving capacities of the child", as laid down in article 5 of the Convention on the Rights of the Child, is reiterated only in article 14, paragraph 2, of the Convention, which accounts for the significance accorded by the Convention to upholding that principle in the context of freedom of religion or belief. Respect for the evolving capacities of the child is critical, since it reflects the due recognition of the child as a rights holder also within the family context.

1. Religious socialization

40. In the early years, a child's survival, socialization, development and general well-being totally depend on regular support which is usually provided by his or her parents. Accordingly, the "direction" given by parents in the exercise of the child's rights, in accordance with article 5 of the Convention on the Rights of the Child, is particularly far-reaching when concerning infants or young children. That also applies to freedom of religion or belief. Under articles 5 and 14, paragraph 2, of the Convention, States are obliged, first of all, to "respect" those parental rights and duties.

41. Welcoming the newborn child into the family and the larger community frequently involves religious initiation rites. As part of religious socialization processes, such initiation rites, provided they take place with the free consent of the parents, fall within the right to manifest one's religion or belief, as protected under article 18 of the International Covenant on Civil and Political Rights and similar provisions. Limitations, if deemed necessary, for instance to prevent harmful practices, must meet all the criteria listed in article 18, paragraph 3, of the Covenant and reiterated in article 14, paragraph 3, of the Convention.

42. Whereas protection against harmful practices can become an argument for prohibiting or limiting the application of certain initiation rites, depending on the specific circumstances of the case, the child's freedom from religion, or an alleged right of the child to remain uninfluenced by religious initiation, cannot be invoked as arguments for limiting such religious ceremonies undertaken with the free consent of the parents of a child who has not yet reached religious maturity. Moreover, as pointed out earlier, being initiated into a particular religious community does not waive the right of the child to change his or her religion when

[9] See article 18, para. 1, of the International Covenant on Civil and Political Rights.

adopting a different conviction in the course of his or her later development, as protected in article 14, paragraph 1, of the Convention on the Rights of the Child.

2. Religious instruction within the family

43. The small child typically receives his or her first religious instructions within the family and/or the local religious community. Parents engaged in religious instruction thereby exercise their parental rights, while at the same time directing the child in the exercise of his or her own right to freedom of religion or belief. With the tacit or express consent of the parents, the religious community can also take an active role in familiarizing the child with religious or belief matters. States are obliged to respect and protect such activities, including by facilitating the development of the appropriate infrastructure needed for religious communities, especially minority communities, to be able to pass on the tenets of their faith to the next generation.

44. In its assessment of country situations, the Committee on the Rights of the Child repeatedly expressed concerns that State-imposed restrictions on religious instruction might seriously infringe the freedom of children, in particular children belonging to religious minorities, to study and practise their religion (see, for example, CRC/C/CHN/CO/3-4, para. 41, and CRC/C/KWT/CO/2, paras. 37 and 38). The Special Rapporteur and his predecessors also addressed this problem in various country visits (see, for example, A/HRC/10/8/Add.4, para. 46 and A/HRC/28/66/Add.1, para. 63).

45. Religious instruction should be given in a manner consistent with the evolving capacities of the child. Young children may need appropriate child-centred forms of teaching, including through dialogue and example.[10] The more children mature, the more should they be able to take an active part in such instructions and their own positions, questions and concerns should be heard and taken seriously, in accordance with article 12, paragraph 1, and article 14, paragraph 1, of the Convention on the Rights of the Child. An older child should thus also be respected in his or her refusal to receive religious instruction.

3. Participation in religious community life

46. The child has the right to participate widely in religious community practices, including by attending religious services, performing common prayers and ceremonies and celebrating religious holidays. While for younger children that generally presupposes the tacit or express consent of parents or guardians, more mature children deserve respect for their own decisions in that regard, including the decision not to participate if they so wish. When assessing country situations, both the Committee on the Rights of the Child and the Special Rapporteur have expressed concerns about tight restrictions as they exist in some countries. Such restrictions may largely prevent minors from having access to religious community practices, in violation of their freedom of religion or belief (see, for example, CRC/C/UZB/CO/3-4, para. 32, A/HRC/10/8/Add.4, paras. 45 and 46, and A/HRC/28/66/Add.1, para. 64).

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[10] See Committee on the Rights of the Child, general comment No. 7 (2006) on implementing child rights in early childhood.

4. Religious education in schools

47. Article 28 of the Convention on the Rights of the Child recognizes the child's right to education, as also enshrined in other human rights instruments, including article 13 of the International Covenant on Economic, Social and Cultural Rights. That, inter alia, requires that States "make primary education compulsory and available free to all" (article 28, para. 1 (a), of the Convention). The usual place for the implementation of that right is the school, which thus plays a major role in the life of children (for more detail, see A/HRC/16/53, paras. 20-62). However, apart from realizing the child's right to education, the school is also a place in which the child is exposed to authority — not only the authority of teachers, but possibly also that of the State on whose behalf teachers act. The child may also feel exposed to peer pressure. That calls for a sensitive human rights-based approach when organizing school life and it requires that the particular vulnerabilities of children belonging to various minorities are always taken into account.

48. When religious ceremonies, such as public prayers, are performed in school, specific safeguards are needed to ensure that no child is forced to participate against his or her will, or the will of his or her parents. The same principle applies to religious instruction in schools, namely religious education given on the tenets of a particular religion or belief. Such instruction must not be a mandatory requirement and it should always be connected with the option of receiving a low-threshold exemption (see, for example, CCPR/C/82/D/1155/2003). Requests for an exemption must not lead to any punitive consequences and must not influence the assessment of the general performance of students in school. In practice, however, those requirements are often ignored, thus leading to situations in which children are exposed to involuntary religious instruction or even indoctrination. The Committee on the Rights of the Child has even referred to cases of forced conversion taking place in schools (see CRC/C/MMR/CO/3-4, para. 45) and the Special Rapporteur has heard complaints, inter alia, about confessions held by priests during regular school hours (see, for example, A/HRC/22/51/Add.1, para. 63).

49. "Religious instruction" given in school differs conceptually from "information about religions and beliefs". While religious instruction aims to familiarize students with a particular faith, information about religions and beliefs serves the purpose of broadening children's knowledge and understanding of the diversity of faith systems and practices. Unlike religious instruction, which should never be given against the will of the child or his or her parents, information about religions and beliefs can become part of the mandatory curriculum, provided it is taught in a spirit of fairness and neutrality. In that context, the Special Rapporteur would like to recommend the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools as a useful instrument for assessing and improving the quality of such teaching.

50. Parents also have the right to have their children educated in private denominational schools which conform to such educational standards as may be laid down or approved by the State.

5. Voluntary display of religious symbols in schools

51. A much-disputed question concerns the voluntary display of religious symbols by students in public schools, such as headscarves, turbans, kippas or crosses. Following religious dress codes or displaying religious symbols generally belongs

to everyone's freedom to manifest their religion or belief. Although that freedom is not beyond possible limitations, such limitations can only be justified if they satisfy all the criteria laid down in article 18, paragraph 3, of the International Covenant on Civil and Political Rights and reiterated in article 14, paragraph 3, of the Convention on the Rights of the Child.[11]

52. Accordingly, limitations must have a legal basis; they must pursue one of the listed legitimate purposes (public safety, order, health or morals, or the fundamental rights and freedoms of others) and they must be proportionate to such a purpose. Under the principle of proportionality, States have always to look for the least intrusive measure available. Restrictions, for instance, if deemed necessary to protect students from being pressured by peers or their general school environment into wearing religious symbols, should be based on a precise empirical and normative analysis of the situation at issue. General or far-reaching prohibitions of the voluntary wearing of headscarves or other religious symbols by students in schools should remain a last resort. After one of her country visits, the Special Rapporteur's predecessor expressed her concerns that restrictive measures imposed on students would convey "a demoralizing message to religious minorities" (E/CN.4/2006/5/Add.4, para. 98).

53. By generally accommodating the voluntary display of multiple religious symbols by students, the school can become a place in which children experience religious diversity on a daily basis and in a relaxed manner, as part of normal societal life. That may be conducive to fulfilling the purposes of education as listed in article 29, paragraph 1 (d), of the Convention on the Rights of the Child, including the "preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".

6. Respecting the evolving capacities of the maturing child

54. Respect for the evolving capacities of the child is to be ensured in all relevant spheres of life, such as family life, participation in the religious community, school education, the voluntary wearing of religious symbols and other areas. Hence, it is a principle running through all the above-mentioned spheres of application of freedom of religion or belief. For instance, children who have developed their own self-understanding on issues of religion or belief should not receive religious instruction against their will, in or outside school education. Children should have broad access to information concerning religious or philosophical beliefs, also beyond their family's faith. From a certain age or maturity, children deserve respect when taking their own decisions, whether positive or negative, concerning participation in acts of worship, ceremonies or other religious community activities. Depending on his or her evolving capacities, a child may also be able to exercise his or her right to have or adopt a religion or belief of his or her own choice.

55. Some States have defined fixed age thresholds for the child's exercise of certain elements of freedom of religion or belief, for example concerning opting out of religious instruction or converting to another faith with or without the agreement of the parents. However, given the dynamic nature of the child's "evolving capacities", it is preferable to avoid fixed definitions and instead take decisions on a

[11] The following remarks relate only to the display of religious symbols by students, not by teachers.

case-by-case basis, with respect to each individual child's personal situation and maturity. In its general comment No. 12 (2009) on the right of the child to be heard, the Committee on the Rights of the Child also opted for a flexible approach: "The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute his or her views."

7. Non-discrimination on the basis of religion or belief

56. Under article 2, paragraph 1, of the Convention on the Rights of the Child, States shall respect and ensure the rights laid down in the Convention to every child without discrimination, including on the ground of his or her religion or the religion of his or her parent(s) or legal guardian(s). Article 2, paragraph 2, furthermore obliges States to take all appropriate measures in order to provide effective protection of the child against discrimination. Those provisions apply to all spheres of society, such as family laws, public and private schools, institutions of higher education, vocational training, accessibility of employment and health-care institutions. Unfortunately, systematic violations of the principle of non-discrimination persist, often with far-reaching negative implications in particular for the rights of children belonging to religious minorities (see, for example, CRC/C/CHN/CO/3-4, para. 25).

57. Besides direct, open and straightforward forms of discrimination, there are also concealed forms of discrimination, such as structural or indirect discrimination. In order to detect and combat such forms of discrimination, disaggregated statistical data may be needed. The State should develop comprehensive anti-discrimination legislation and policies, with a view to safeguarding the right of the child to be free from any kind of discrimination, including on the basis of religion or belief. Civil society organizations and national human rights institutions operating in line with the Principles relating to the Status of National Institutions (Paris Principles) should play an active role in the design and implementation of anti-discrimination policies.

D. Conflicts

1. The need for diligence when dealing with conflicting human rights concerns

58. The Convention on the Rights of the Child combines the recognition of the child as a genuine rights holder with respect for the rights and duties of parents or legal guardians in directing the child in the exercise of his or her human rights. However, situations can occur in which State interventions in the sphere of parental rights are necessary, for instance to protect the child from neglect, domestic violence or harmful practices. According to article 19, paragraph 1, of the Convention, "States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." In the context of the right to health, article 24, paragraph 3, of the Convention obliges States to "take all

effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children".

59. Moreover, the right to education has the component of compulsory primary education, which by implication can also be enforced against the will of the parents or guardians (article 28, paragraph 1 (a), of the Convention). With regard to adolescents, the Committee on the Rights of the Child emphasizes that States parties should provide them "with access to sexual and reproductive information, including on family planning and contraception, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)."[12] In that context the Committee insists that adolescents should "have access to appropriate information, regardless of ... whether their parents or guardians consent."[12]

60. State interventions should always be carried out with the purpose of supporting families in fulfilling their task of providing a suitable environment for the flourishing of the rights of the child, to the maximum degree possible. It is in that spirit that article 19, paragraph 2, of the Convention on the Rights of the Child, calls, inter alia, for "the establishment of social programmes to provide necessary support for the child and for those who have the care of the child". Separating a child from his or her parents against their will in order to protect the best interests of the child must remain the ultimate resort. As the Committee on the Rights of the Child has pointed out in its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration: "Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child." Under article 9, paragraph 1, of the Convention, "competent authorities subject to judicial review" have to "determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child". Even in such a situation, the child should be able to "maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (article 9, paragraph 3).

61. The Special Rapporteur sees a need to stress that this understanding must also guide the handling of cases involving religious minorities. Unfortunately, that is not always the case. When dealing with religious minorities, small communities or new movements, often branded as "sects", some State agencies seem to operate on the assumption that, in case of doubt, children should be separated from their parents. Lack of diligence and respect, possibly based on prejudice, is thus a source of major human rights concerns, also from the perspective of the Convention on the Rights of the Child.

62. In some situations, State interventions may actually prove necessary to safeguard the best interests of the child, for instance if the child's rights to life, health or education are imperilled. However, any such situation warrants a careful empirical and normative assessment. Empirical diligence is needed, inter alia, to avoid stereotypical ascriptions, possibly based on rumours, overgeneralizations or merely abstract, possibly far-fetched fears. Members of small religious communities

[12] General comment no. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

or new religious movements often run an increased risk of having their rights infringed. In extreme cases, parents have lost their custody rights without any serious empirical investigation having taken place and without being granted effective legal remedies. Besides empirical negligence, there is also the danger of normative negligence if due weight is not given to all the human rights concerns at stake and the criteria set out for limitations are ignored. For instance, cases of religious conversion of o parent have led to him or her being deprived of custody rights, often against the explicit will of the parents and the child, and sometimes as a consequence of a forced divorce being required by the State in the wake of one parent's conversion.

2. Ensuring non-discriminatory family laws and settlement of family-related conflicts

63. According to article 7, paragraph 1, of the Convention on the Rights of the Child, the child has the right to be cared for by his or her parents. That must also guide the handling of family crises, such as a divorce. In such situations, the best interests of the child must be a primary consideration (article 3); the child, once able to express his or her views, must have a chance to be heard in judicial or other official hearings (article 12, paragraph 2); and if separation from a parent proves necessary, the child is generally entitled to maintain personal relations with both parents (article 9, paragraph 3).

64. In cases in which the two parents follow different religions or beliefs, such a difference cannot in itself serve as an argument for treating parents differently, for instance in decisions on custody rights in divorce settlements. Discrimination against parents on the grounds of their religion or belief may simultaneously amount to a serious violation of the rights of the child in their care. That also applies to members of religious minorities, new religious movements, atheists, agnostics or converts.

65. In quite a number of countries, that issue is a source of major human rights concern, since family laws reflect traditional religious or ideological hegemonies, thus leading to systematic discrimination based on religion or belief, often in conjunction with gender-based discrimination (see A/HRC/25/58/Add.2, paras. 28-37). In some legal systems people from certain religious or belief backgrounds are even prevented from entering a legally recognized marriage, which may result in children being treated as "illegal". Family law reforms with the purpose of eliminating such discrimination based on religion or belief must be a priority. Judges dealing with family laws should receive training based on all relevant human rights instruments.

66. When a child is given into foster care, adoption or *kafalah* (an institution of Islamic law), the child's freedom of religion or belief must always be respected. According to article 20, paragraph 3, of the Convention on the Rights of the Child, in such situations "due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background".

3. Combating harmful practices

67. A much-discussed issue concerns harmful practices, which are sometimes invoked in the name of cultural or religious traditions. Many of those practices particularly affect girls. In 2014, the Committee on the Elimination of

Discrimination against Women and the Committee on the Rights of the Child addressed the problem in a joint general recommendation/general comment. The two Committees listed "female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence" among "the most prevalent and well documented" harmful practices "grounded in discrimination based on sex, gender, age and other grounds".[13] A more comprehensive list also includes neglect of girls, extreme dietary restrictions, virginity testing, binding, scarring, branding/tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, witchcraft, infanticide, incest, breast ironing or pressure to be fashionably thin.

68. The Special Rapporteur fully subscribes to the recommendation formulated by the two Committees that "the obligation to protect requires States parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices".[13] He shares the observation "that prevention can be best achieved through a human rights-based approach to changing social and cultural norms, empowering women and girls, building the capacity of all relevant professionals who are in regular contact with victims, potential victims and perpetrators of harmful practices at all levels, and raising awareness of the causes and consequences of harmful practices, including through dialogue with relevant stakeholders".[13]

69. Whether harmful practices, or some of them, are based on religious grounds usually remains contested between and within various religious communities. It is important to be aware of such inter- and intrareligious diversity and contestation, when designing appropriate counter-strategies, in order to avoid false generalizations and mobilize support from religious communities, or parts of communities, in the fight against harmful practices. Community leaders have a particular responsibility to clarify that harmful practices, wherever they exist, must be abandoned. In that context, the Special Rapporteur's predecessor publicly welcomed statements clarifying religious views on female genital mutilation and the recommendations of the international conference of scholars concerning a ban on abuse of the female body, held at Al-Azhar University, Cairo, in 2006 (see A/HRC/4/21, para. 38, footnote).

70. Moreover, whatever their reasons may be, harmful practices can never be justified as legitimate manifestations of freedom of religion or belief. Being part of the broader human rights framework, freedom of religion or belief can never become a pretext for legitimizing cruel practices and violations of human rights. If necessary, the limitation clauses, as laid down in article 18, paragraph 3, of the International Covenant on Civil and Political Rights and article 14, paragraph 3, of the Convention on the Rights of the Child, must be applied. As already emphasized, they must always be applied with empirical and normative diligence and those affected by limitations must have access to effective legal remedies when claiming that their human rights have been violated.

[13] Joint general recommendation/general comment No. 31 (2014) of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices.

4. Controversies around male circumcision

71. A question which has caused some controversy is how to assess the ritual circumcision of male infants, which is widely practised in some religions. For many believers, it counts as a core element of their religious identities and as an integral part of religious initiation processes. At the same time, it obviously has irreversible physical consequences. Male circumcision has been particularly contested when carried out by untrained personnel in unhygienic settings and without adequate pain relief, which increases the risk of serious medical complications and may even have fatal consequences, including death. The Committee on the Rights of the Child has therefore recommended taking effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision (CRC/C/15/Add.122, para. 33).

72. The issue has also been discussed within those religious communities in which ritual male circumcision is widely practised and seen as an essential element of their identity. Although some reformers have proposed postponing the practice to an age at which the child concerned can take his own decisions, the vast majority of parents continue to understand and practise circumcision as an indispensable element of religious initiation rituals performed on their children.

73. While some national legislators have specified certain conditions for the practice of circumcision, in the spirit of the recommendation of the Committee on the Rights of the Child, no State has outlawed the practice as such, which would be a far-reaching intervention into parental rights. The Special Rapporteur would argue that, if performed by trained practitioners, in sanitary conditions and with the clearly expressed consent of parents or guardians, male circumcision of children who have not yet reached religious maturity should generally be respected as falling within the freedom to manifest one's religion or belief, which includes the ritual initiation of children into religious life. At the same time, he would like to encourage further discussion, including within practising religious communities, about how to improve the conditions of male circumcision in order to avoid the risks of physical and psychological damage.

IV. Conclusions and recommendations

74. **The Special Rapporteur calls upon States to pay more attention to violations of the rights of the child and his or her parents in the area of freedom of religion or belief. That may particularly concern persons belonging to minorities, converts, dissidents, critics, atheists or agnostics, members of non-recognized groups and others.**

75. **Due respect for the rights of the child and his or her parents in the area of freedom of religion or belief has been corroborated in article 14 of the Convention on the Rights of the Child. While article 14, paragraph 1, enshrines the fundamental status of the child as a rights holder in the area of freedom of religion or belief, article 14, paragraph 2, provides that parents or legal guardians have the rights and duties to direct the child in the exercise of his or her freedom of religion or belief. Such direction should be given in a manner consistent with "the evolving capacities of the child", in order to facilitate a more and more active role of the child in exercising his or her freedom of**

religion or belief, thus paying respect to the child as a rights holder from early on. Article 14 of the Convention should be interpreted in line with all other relevant international standards on freedom of religion or belief, including article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

76. **The rights of children and parental rights in the area of freedom of religion or belief, although in practice not always consonant, should generally be interpreted as being positively interrelated. They cover various spheres of life, from the child's religious initiation into the family and his or her participation in religious community life to religious instruction given in the context of school education. While State interventions may sometimes be necessary, for instance to protect the child from neglect, domestic violence or harmful practices, unjustified State interference with parental rights in the area of freedom of religion or belief will in many cases simultaneously amount to violations of the rights of the child.**

77. **Harmful practices, such as female genital mutilation or child marriage, can never be "justified" by the invocation of freedom of religion or belief and States are obliged to take all appropriate measures to eliminate such practices. When tackling the root causes of harmful practices, including certain cultural and religious traditions, States should avoid stereotypical overgeneralizations, always bearing in mind the broad range of inter- and intrareligious pluralism.**

78. **When ritual male circumcision of a child is performed, appropriate sanitary conditions and professional performance should be ensured.**

79. **Against the background of the observations above, the Special Rapporteur formulates the following recommendations:**

(a) **In line with the Convention on the Rights of the Child and other relevant international human rights standards, States and other stakeholders, including religious communities and families, should recognize the status of the child as a rights holder;**

(b) **States should withdraw reservations concerning article 14 of the Convention on the Rights of the Child. When implementing the Convention, they should understand article 14 as an integral part of it, which stands in continuity with freedom of religion or belief, as enshrined in other international instruments, including article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;**

(c) **Article 14 of the Convention on the Rights of the Child should be broadly interpreted as covering theistic, non-theistic and atheistic beliefs, including the right not to profess any religion or belief;**

(d) **States should respect, protect and promote parental rights and the rights of the child as, in general, positively interrelated rights, including in the area of freedom of religion or belief. Respect for the "evolving capacities of the child" should be understood as an integral part thereof. States should avoid**

fixed age limits when identifying religious maturity in order to do justice to the personal religious maturation of each individual child;

(e) As part of the positive interrelatedness of parental rights and the right of the child to freedom of religion or belief, States should generally respect religious initiation rites, in which the small child is introduced into the family and community, if initiated by parents and/or carried out with their consent;

(f) State interventions into parental rights in the area of freedom of religion or belief, for example if deemed necessary to prevent harmful practices and to safeguard the best interests of the child, must always be enacted with empirical and normative diligence, always bearing in mind the prescribed criteria for limitations;

(g) States should repeal unduly restrictive regulations, wherever they exist, in order to facilitate the participation or non-participation of children in religious community life, in accordance with their wishes or the wishes of the parents, depending on the maturity of the child;

(h) When providing religious instruction in public schools, States should ensure low-threshold options for the child and his or her parents to get exemptions, with the purpose of preventing children from being exposed to religious instruction against their own will or that of their parents;

(i) When providing information about religions and beliefs as part of the regular school curriculum and with a view to broadening the child's knowledge, States should ensure that such information is of high quality, which should always be based on solid research and should furthermore do justice to the self-understanding of the followers of different religious communities, always taking into account internal diversity. The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools can serve as a useful tool to ensure quality management in that area;

(j) Religious instruction and/or information about religions, as given in schools or other educational settings, should always respect the evolving capacities of the child who, in the course of his or her maturation, should be able to assume a more active role in the exercise of his or her freedom of religion or belief;

(k) States should reform unduly restrictive dress code regulations for students in schools in order to facilitate a school life in which students can experience free and voluntary manifestations of religious or belief-related diversity, as a normal aspect of living together in a modern society;

(l) States should reform family laws which discriminate against parents or legal guardians belonging to religious minorities, or against parents who are converts, atheist or agnostics, with a view to upholding the best interests of the child and fully guaranteeing the right of the child to freedom of religion or belief without discrimination. Such reforms may also prove necessary in the interests of equality between men and women;

(m) States should reform administrative practices which may lead to different religions being ascribed to converts and their children against their will. Such practices, apart from violating the freedom of religion or belief of

parents who have converted, will in many cases also violate the rights of the child;

(n) States should provide appropriate training for judges or other officials involved in the settlement of family conflicts, such as divorces, in order to ensure that the religious orientation of parents or legal guardians, including religious conversion, does not lead to discriminatory treatment;

(o) States should provide effective anti-discrimination legislation and policies, to eliminate all forms of discrimination based on the religion or belief of the child and his or her parents or legal guardians. Special attention should be given to aggravated, multiple or intersectional discrimination, for instance discrimination based on religion or belief in combination with ethnicity, age and gender;

(p) States should collect disaggregated statistical data, which may help in detecting concealed forms of discrimination based on the religion or belief of a child, or his or her parents;

(q) States should take all appropriate measures to eliminate harmful practices. When tackling the issue of harmful practices, including practices allegedly based on certain cultural or religious traditions, States should avoid stereotypical overgeneralizations and should bear in mind the inter- and intrareligious diversity which usually exists with regard to such practices;

(r) Religious communities should discuss the issue of how to better ensure respect for the freedom of religion or belief of children within their teaching and community practices, bearing in mind the status of the child as a rights holder and the need to respect the evolving capacities of each child;

(s) Religious community leaders should support the elimination of harmful practices inflicted on children, including by publicly challenging problematic religious justifications for such practices whenever they occur.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted in accordance with Assembly resolution 69/177.

* A/70/150.

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Interim report of the Special Rapporteur on the right to food

Summary

The present report, submitted in accordance with General Assembly resolution 69/177, constitutes the second report to the Assembly of the Special Rapporteur of the Human Rights Council on the right to food. The report outlines the adverse impact of climate change on the right to food. It places particular emphasis on the geographic and socioeconomic vulnerabilities of those most affected and highlights the negative impact that current agricultural practices and food systems are having on climate change. The report concludes by stressing that in order to eradicate hunger and ensure the full realization of the right to food, more must be done to develop relevant, effective mitigation and adaptation policies and a human rights approach must be adopted as a means of achieving climate justice.

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I. Introduction

1. Climate change, sustainable resource management and food security are now widely considered to be among the most complex, interdependent and urgent global policy challenges. The world's scientific community predicts that average temperatures will rise by 2° to 4°C by the end of the century, posing multiple threats to agricultural production.

2. Climate change is already having a significant impact on approximately one billion of the world's poor. The most recent figures of the Food and Agriculture Organization of the United Nations (FAO) suggest that some 795 million people are hungry;[1] without the implementation of serious measures to combat climate change, this figure could rise some 20 per cent by 2050.[2]

3. The relationship between climate change and food systems is complex. Climate change has negative impacts on agriculture while current agricultural practices and food systems are responsible for harming the environment, affecting social and environmental determinants of health and accelerating human-induced climate change. Moreover, climate change is undermining the right to food, with disproportionate impacts on those who have contributed least to global warming and are most vulnerable to its harmful effects. Urgent action must be taken to prevent climate change from intensifying, to mitigate greenhouse gas emissions and to adapt to its unavoidable effects. A policy shift is necessary to respond to the challenges posed by climate change beyond mitigation and adaptation so as to respect peoples' human rights, including the right to food, while sustaining the Earth's renewable resources.

4. Although the threat posed by climate change to food security has been recognized by the global climate change regime, it has been cautious in its recognition of the need to adopt a human rights-based approach to addressing climate change. Gaps in the regime have already been identified, particularly in relation to the human rights implications of the clean development mechanism defined in article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and of reducing emissions from deforestation and forest degradation in developing countries as well as of measures affecting energy, biofuels and adaptation.

5. In the present report, the Special Rapporteur wishes to emphasize the need to adopt a human rights-based approach to climate change governance as a means of overcoming climate injustices that vulnerable people are experiencing in relation to the right to food. In her conclusion, the Special Rapporteur notes that the standard discourse on climate change tends to overlook the fundamental relevance of climate justice and human rights considerations in shaping its recommended response to the policy challenges it poses.

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[1] FAO, International Fund for Agricultural Development (IFAD) and World Food Programme (WFP), *The State of Food Insecurity in the World 2015: Meeting the 2015 International Hunger Targets: Taking Stock of Uneven Progress* (Rome, 2015).

[2] Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Summary for Policymakers: Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014).

II. Impact of climate change on the right to food

6. In its general comment No. 12 (1999), the Committee on Economic, Social and Cultural Rights defined the necessary elements required for the right to food (i.e. the possibility either to feed oneself directly from productive land or other natural resources or to purchase food) as availability, accessibility and adequacy.

Availability

7. Availability relates to the presence of sufficient food from natural resources or for sale on the market to meet the needs of the population. With rising temperatures and increased frequency of extreme weather events, the negative impact of climate change on crop, livestock, fisheries and aquaculture productivity on food availability will have significant global reach. Although tolerance of different crops to changes in temperature and water availability may vary considerably, climate change is expected to have mostly negative implications for crop yields and will "more likely than not" depress them by more than 5 per cent beyond 2050.[3]

8. Water scarcity and more frequent droughts are also expected in arid regions. If urgent additional climate change mitigation efforts are not initiated, heavy rainfall and resulting flooding could destroy entire crops as well as food stores and may affect agricultural land due to sedimentation. More frequent and intense extreme weather events will also complicate the logistics of food distribution during emergencies. In the short term, climate change is set to increase natural hazards, with more significant risks leading to environmental degradation over time.

9. An increase of just 1°C in temperature can have devastating impacts on crop yields and the ability to maintain current levels of agricultural production. Currently, negotiations within the United Nations Framework Convention on Climate Change are limiting projections to an increase of 2°C. However, this is not adequate, given that in some regions, including sub-Saharan Africa, summer temperatures are projected to reach 5°C above the baseline temperature by 2100.[4]

10. Acceleration in glacial melt is also expected to raise sea levels by up to 2 m by 2100,[5] affecting food availability in the coastal areas and river deltas that are home to 60 per cent of the world's population. Inundation of coastal agricultural lands, especially where there is little capacity to build sea defences, will lead to increased groundwater salinization, thereby affecting the quantity and quality of water available for agricultural production.[6] As a result, significant climate-induced migration is expected to force people to move inland and to more food-secure places.

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[3] Ibid.

[4] Potsdam Institute for Climate Impact Research and Climate Analytics, *4° Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience* (Washington, D.C., International Bank for Reconstruction and Development/The World Bank, 2013).

[5] United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (New York, 2014).

[6] P. Krishna Krishnamurthy, Kirsty Lewis and Richard J. Choularton, "Climate impacts on food security and nutrition: a review of existing knowledge", WFP and Met Office Hadley Centre, 2012. Available from http://documents.wfp.org/stellent/groups/public/documents/communications/wfp258981.pdf.

11. Increases in sea temperatures and the acidification of oceans owing to rising levels of concentration of carbon dioxide in the atmosphere are also expected to have major effects on the fisheries sector (A/67/268). Warming oceans can lead to increased and more severe outbreaks of algal blooms, which can have a devastating impact on fish populations. Calcifying organisms are also threatened, which in turn reduces dependent fish populations. A consensus exists that climate change will have a negative impact on fisheries' production, especially in developing countries in tropical areas.[7]

Accessibility

12. Accessibility refers to both physical and economic access. Physical accessibility means that food should be accessible to all persons, including the physically vulnerable such as children, older persons and persons with a disability; economic accessibility means that food should be affordable without compromising other basic needs such as education, health care or housing.

13. Changes in food production and quality affect market prices and, in turn, price increases affect accessibility to food, especially for the poor. Socially vulnerable groups may have to alter their diet, substituting less nutritious and lower-quality food items and, as a result, diminishing dietary diversity owing to dependence on a few staple foods.

14. Sharp price increases for all major crops can be expected as a result of climate change accompanied by population growth, changing diets and increasing demand for non-food crops. Although it is difficult to predict food prices because of the many variables, the Intergovernmental Panel on Climate Change expects with medium confidence that global food prices will rise substantially by 2050.[8] The Intergovernmental Panel predicts that low-income agricultural economies that are net food importers could experience significant losses in food access through a "double negative" effect of reduced domestic agricultural production and increased food prices on global markets.[9] Furthermore, sudden shocks in prices and currency values, as well as extreme weather events, can also create obstacles to food distribution, making it difficult to deploy adequate responses to an increasingly frequent number of emergencies.

Adequacy

15. Adequacy requires that food satisfy dietary needs (factoring in a person's age, living conditions, health, occupation, sex, etc.) and be safe for human consumption, free of adverse substances, culturally acceptable and nutritious.

16. In its *Fifth Assessment Report* the Intergovernmental Panel on Climate Change concluded with high confidence that climate change will have a substantial negative impact on food production and food nutritional quality and on per capita calorie availability. Increased droughts can have severe detrimental impacts on nutrition and rising carbon dioxide emissions are causing harm to staple food crops, reducing their nutrient content, including of zinc (zinc deficiency is responsible for a large

[7] Intergovernmental Panel on Climate Change, *Fifth Assessment Report* (2013-2014) (see note 2 above).

[8] Ibid.

[9] Ibid.

number of diseases worldwide). Heavy rainfall may also be linked to lower quality of crops owing to fungal infections. Over time, climate change is set to reduce food quality, decrease water availability and aggravate the prevalence of infectious vector-borne diseases and chronic intestinal infections, while food storage will also become problematic owing to warmer weather. It is estimated that 50-60 per cent of the world population will be exposed to dengue fever by 2085, further degrading their nutritional status.[10]

17. Moreover, childhood undernutrition and stunting will increase, provoking a rise in nutrition-related deaths in children in developing countries. Calorie availability in 2050 is likely to decline throughout the developing world, resulting in an additional 24 million undernourished children. It is expected that health losses will occur mainly in areas that are already food insecure. Climate change exacerbates undernutrition and undermines efforts to reduce poverty and resilience, particularly in sub-Saharan Africa. A recent drought-triggered famine in Somalia spurred food crises in neighbouring countries, illustrating the possible consequences of more frequent extreme weather events.[11]

18. Adaptation and mitigation strategies should address these challenges. So far, no broadly accepted and comprehensive analytical frameworks have been developed that analyse the impacts of climate change on food security and nutrition.

Sustainability

19. While not specifically enunciated in general comment No. 12 (1999), sustainability is linked to hunger-reduction strategies and policies as it places emphasis on the principles of participation, non-discrimination, transparency and empowerment.

20. Sustainability is defined in connection with the notion of adequate food or food security, implying that food will be accessible for both present and future generations. Food sustainability and security are also dependent on an adequate diet, clean water, sanitation and health care, to reach a state of nutritional well-being where all physiological needs are met.[12]

21. The Intergovernmental Panel on Climate Change predicts with medium confidence that droughts will intensify in the twenty-first century, owing to reduced precipitation and/or increased evapotranspiration. Water is crucial to food security, as it is necessary for food production, preparation and processing, as well as the absorption of nutrients within the human body.

22. Freshwater sources include rainwater, surface water and groundwater, all of which are crucial to food security. When rainfall is insufficient, agriculture relies on irrigation. As some 40 per cent of all irrigation relies on groundwater sources,[13]

[10] Partnership for Maternal, Newborn and Child Health, "Protecting women and children's health from a changing climate", Knowledge Summaries, No. 32 (April 2015). Available from www.who.int/pmnch/knowledge/publications/summaries/ks32.pdf?ua=1.

[11] M. C. Tirado and others, "Climate change and nutrition in Africa", *Journal of Hunger and Environmental Nutrition*, vol. 10, No. 1 (March 2015).

[12] FAO, "Food security", FAO Policy Briefs, No. 2 (June 2006). Available from www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf.

[13] Ibid.

climate-induced impacts on the sustainability of groundwater sources have a tremendous impact on the potential for food production.

23. Water is also an important aspect of transportation, which affects the distribution of food and income generation. This in turn has an impact on the livelihoods of individuals and therefore their ability to purchase food. Climate change puts additional pressure on water resources on the supply side.[14] It also increases demand for water to sustain crop and livestock production increases in a progressively warming climate as well as having a tremendous impact on fisheries as a result of changes to water flows and temperatures.[15]

24. Communities can reduce food insecurity risks by complementing their traditional knowledge and practices with information and support from Governments and others, including rapid response systems and capacity-building for disaster preparedness, mitigation and management. Supporting local communities helps to maintain resilience and should be encouraged.

III. Regions affected by food insecurity resulting from climate change

25. The Intergovernmental Panel on Climate Change has expressed with high confidence that, despite regional variabilities, climate change is likely to have an overall negative effect on yields of major cereal crops across Africa. Climate change is expected to interact with non-climate drivers and stressors to exacerbate vulnerability of agricultural systems on the continent, particularly in semi-arid areas. Global projections suggest that the number of people at risk of hunger will increase by 10-20 per cent by 2050 and that 65 per cent of them will be in sub-Saharan Africa.[16] Sub-Saharan Africa is often cited as the most impoverished region in the world because hunger is most prevalent there, affecting 25 per cent of the population.[17] Other African nations, including the Central African Republic and South Sudan, are similarly vulnerable to food insecurity, with the latter currently on the brink of famine.[18]

26. In Southern Africa, it is estimated that yields from rain-fed agriculture could decrease by up to 50 per cent between 2000 and 2020 (A/HRC/16/49). The Middle East and North Africa is expected to be the region most affected by climate change after sub-Saharan Africa. Average temperatures in that region are forecast to increase by 3°-4°C by the end of the century, faster than the global average.[19]

27. World hunger is not limited to Africa. The largest population of hungry people — 500 million — live in Asia and 98 per cent of the people living with food insecurity are in developing countries around the world. The impact of climate

[14] High Level Panel of Experts on Food Security and Nutrition, "Water for food security and nutrition", May 2015. Available from www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_Reports/HLPE-Report-9_EN.pdf.

[15] Ibid.

[16] WFP and Met Office Hadley Centre, "Climate impacts on food security and nutrition", chap. II, note 7.

[17] FAO, IFAD and WFP, *The State of Food Insecurity in the World 2015*, chap. I, note 1.

[18] FAO, *Regional Overview of Food Insecurity*.

[19] Intergovernmental Panel on Climate Change, *Fifth Assessment Report*.

change makes it very difficult to combat hunger, especially in regions that are already under serious threat from both climate change and food shortage.

28. The Intergovernmental Panel on Climate Change further notes that in Central America, north-east Brazil and parts of the Andean region, increases in temperature and decreases in rainfall could lower productivity by 2030, aggravating food security among the poorest members of society.

IV. Effects on vulnerable populations and their livelihoods

29. Understanding the specific impacts of climate change on food security is challenging because vulnerabilities are unevenly spread across the world and depend ultimately on the ability of communities to manage risks and develop resilience. Moreover, climate change is undermining the right to food, having disproportionate impacts on those who have contributed least to global warming.

30. Developing countries are likely to be the hardest hit by climate change not only because of their geographical location but also because of the way people earn their livelihoods. The majority of people living in poverty in developing countries dwell in rural areas and many of them depend on agricultural activities to provide food for their families and generate income. Both aspects have implications for non-farm rural households, either through the availability of food, which can cause fluctuations in local prices, or as an indirect source of employment.[20]

31. Ensuring sustainable livelihoods is a crucial aspect of food security and one that is also threatened by climate change. FAO notes the dual role played by agricultural production in relation to food security: it not only produces the food that people eat, but also provides the primary source of employment for 36 per cent of the world's workforce. In some regions, including Asia and the Pacific, 40-50 per cent of the workforce is engaged in agriculture; in sub-Saharan Africa; two thirds of the working population is employed in agricultural labour.[21] Thus, if agricultural production is adversely affected by climate change, so too are the livelihoods of significant numbers of rural workers.[22]

32. While more affluent countries are better able to cope with the effects of climate change, nations with a higher proportion of people living in poverty may not have access to necessary infrastructure and resources and their populations have fewer opportunities to diversify their livelihoods and reduce their dependence on agriculture.[23] Within this group of vulnerable populations, small-scale farmers and indigenous peoples, particularly women who depend on climate-sensitive natural systems for their food and livelihoods, are expected to be particularly susceptible to the effects of climate change on their food security.

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[20] Marcus Kaplan, Chinwe Ifejika-Speranza and Imme Scholz, "Commentary VII: promoting resilient agriculture in sub-Saharan Africa as a major priority in climate change adaptation", in *Trade and Environment Review 2013: Wake up Before it is Too Late: Make Agriculture Truly Sustainable Now for Food Security in a Changing Climate* (Geneva, United Nations Conference on Trade and Development, 2013).

[21] FAO, *Climate Change and Food Security: A Framework Document* (Rome, 2008).

[22] High Level Panel of Experts on Food Security and Nutrition, "Food security and climate change", June 2012. Available from www.fao.org/3/a-me421e.pdf.

[23] Kaplan, Ifejika-Speranza and Scholz, "Commentary VII".

Smallholder farmers

33. Smallholder farmers constitute a significant portion of the world's population. Estimated to number 500 million worldwide, they represent 85 per cent of the world's farms but use no more than 20 per cent of the world's arable land.[24] They are responsible for growing over 70 per cent of the world's food and are critical to global food security. Yet, they are also estimated to represent half of the hungry.[25] Therefore, unless small-scale farmers are given the appropriate support and technology to confront climate change, the resulting negative impact on food production and increase in world hunger will be devastating.

34. Subsistence farmers often inhabit the most exposed and marginal landscapes, such as hillsides, deserts and flood plains, and may already suffer from chronic food insecurity. Other factors contributing to their food insecurity may include insecure land tenure and lack of crop insurance and irrigation options. They may also lack access to formal social safety nets and have unpredictable and uneven exposure to markets and finance. They often have no access to information and technology to explain how the local climate is changing and how to adjust their farming strategies accordingly. Despite being skilful and resilient in dealing with nature, the current speed and intensity of climate change is outpacing their capacity to adapt.[26]

Women

35. As farm labourers, vendors and unpaid care workers, women are responsible for food preparation and production in many countries and regions around the world and play a vital role in food security and nutrition. Nevertheless, women and girls continue to be disproportionately affected by climate change, poverty and malnutrition. Women in rural areas are particularly affected as the number of female-headed households continues to grow, exceeding 30 per cent in some developing countries, while women own only 2 per cent of agricultural land and have limited access to productive resources.[27] According to FAO, women are responsible for 50 per cent of the world's food production, most of which is for family consumption.

36. In addition to the many challenges they face in relation to food production, women face significant barriers in tackling climate change because of their gender. Their vulnerability to climate change-related risks is exacerbated by discriminatory practices in the agricultural sector, where gender discrimination may affect women's access to financing, technical support and other necessary resources. They may also have less bargaining power in or be excluded from decision-making on land use or

[24] Celia A. Harvey and others, "Extreme vulnerability of smallholder farmers to agricultural risks and climate change in Madagascar", in *Philosophical Transactions B: Achieving Food and Environmental Security: New Approaches to Close the Gap*, vol. 369, No. 1639 (5 April 2014).

[25] International Federation of Organic Agriculture Movements, "IFOAM highlights the plight of smallholder farmers on Earth Day", 22 April 2014. Available from www.ifoam-eu.org/sites/default/files/pr_earth_day_0.pdf.

[26] IFAD, "Climate change and the future of smallholder agriculture", discussion paper prepared for the round table on climate change held at the thirty-first session of the IFAD Governing Council, Rome, 14 February 2008.

[27] Isabella Rae, *Women and the Right to Food: International Law and State Practice* (Rome, FAO, 2008).

preparedness and adaptation strategies.[28] Migration as a result of natural disasters, climate change and conflict also has a disproportionate effect on women, increasing the difficulties of providing for their families, including children and the elderly. This affects in particular women living in rural areas and among the urban poor.

37. The empowerment of women by way of education, secure property rights and technology is paramount to tackling climate change and at the same time eliminating hunger and poverty by using the knowledge and experience of local women. At the national and local levels, rights-based practices can contribute to climate justice. For example, women in Maradi, Niger, traditionally lacked access to rights, making them particularly vulnerable to food crises caused by recurrent droughts. Rights-based approaches have been used at the community level to improve women's access to and control over land as well as their access to information and credit. Enabling women to adapt their agricultural practices improves household nutrition and generates income. Helping women and other vulnerable groups to claim their rights is therefore essential to climate justice.[29] Similarly, the Consultative Group for International Agricultural Research, in Behar, India, organized a series of training programmes to promote women's empowerment and leadership to fill the knowledge gap in climate change.[30]

Indigenous peoples

38. Indigenous peoples are already among the world's most vulnerable and marginalized communities in many parts of the world owing to discriminatory policies. They are highly dependent on natural resources, with subsistence agriculture, hunting and gathering forming a core part of their livelihoods, and they often have very limited additional income from other activities. Additionally, they may face situations where the land tenure and access rights of their communities are not legally recognized.

39. Indigenous peoples often live in physically isolated and harsh environments and rely on fragile ecosystems that are particularly susceptible to climate change and natural disasters. Such ecosystems include tropical rainforests, arctic regions, deserts, low-lying and coastal areas, small islands, open grasslands and mountainous areas. Damage to these ecosystems threatens indigenous peoples' resource bases and traditional ways of securing food. As a result of a decline in biodiversity, traditional subsistence food is being lost in these regions, along with access to medicinal plants traditionally used to ward off pests and disease.

40. The Intergovernmental Panel on Climate Change has recognized that climate change in polar regions will affect the informal, subsistence-based economy of indigenous peoples, with changing sea ice conditions likely to reduce their ability to hunt the marine mammals that are a significant source of both food and livelihood.[31]

[28] FAO, "FAO Programme: Food Security". Available from www.fao.org/gender/gender-home/gender-programme/gender-food/en/.

[29] Mary Robinson Foundation — Climate Justice, "Human rights and climate justice", position paper, 27 June 2014. Available from www.mrfcj.org/media/pdf/PositionPaperHumanRightsandClimateChange.pdf.

[30] Dharini Parthasarathy and Cecilia Schubert, "Empowering women to take the lead on climate change adaptation", 3 March 2014. Available from https://ccafs.cgiar.org/blog/empowering-women-take-lead-climate-change-adaptation#.VZuStxaEzzJ.

[31] Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Part B: Regional Aspects* (see note 2 above).

Similarly, indigenous peoples living in mountainous areas will suffer a depletion of food sources owing to the loss of alpine flora. Coastal erosion on Pacific islands is threatening agricultural practices while traditional cattle and goat farming is being endangered in arid regions. There is considerable concern that the impacts of climate change may overstrain indigenous and traditional peoples' capacity to cope and adapt (A/HRC/29/19).

V. Impact of agriculture and food systems on climate change

41. The previous sections illustrate how climate change can undermine the right to food. The following section will provide an overview of the ways in which agriculture and food systems can negatively affect climate change, endangering the full enjoyment of the right to food.

Greenhouse gas emissions

42. The food system as a whole is a significant contributor of greenhouse gas emissions. Crop and livestock agriculture currently account for about 15 per cent of global emissions.[32] Direct greenhouse gas emissions from agriculture include methane (CH_4) emissions from flooded rice fields and livestock, nitrous oxide (N_2O) emissions from the use of organic and inorganic nitrogen fertilizers and carbon dioxide (CO_2) emissions from loss of soil and organic carbon in croplands as a result of agricultural practices and in pastures as a result of increased grazing intensity.[33] In addition to these direct emissions, agriculture and food production are also responsible for an increase in indirect emissions that are accounted for in other sectors (industry, transport, energy supply, etc.), which can misleadingly understate the environmental footprint of agriculture. The production of fertilizers, herbicides and pesticides as well as energy consumption for tillage, irrigation, fertilization, harvesting and transport contribute to 60 per cent of total food system emissions globally, although there is significant regional variation. The expansion of agricultural areas and changes in land use contribute an additional 15-17 per cent of emissions. It is further estimated that future income and population growth will increase agricultural emissions dramatically unless low-emissions growth strategies for agriculture are found.[34]

Role of livestock

43. The world's current consumption pattern of meat and dairy products is a major driver of climate change and climate change can only be effectively addressed if demand for these products is reduced. Livestock systems are the source of 33 per cent of the protein in human diets, while 30 per cent of land worldwide is used to

[32] Rob Bailey, Antony Froggatt and Laura Wellesley, "Livestock — Climate Change's Forgotten Sector: Global Public Opinion on Meat and Dairy Consumption" (London, Royal Institute of International Affairs, 2014). Available from http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141203LivestockClimateChangeBaileyFroggattWellesley.pdf.

[33] High Level Panel of Experts on Food Security and Nutrition, "Food security and climate change", see chap. IV, note 25.

[34] Rani Molla, "How much of the world's greenhouse-gas emissions come from agriculture?", *Wall Street Journal*, 29 September 2014.

raise livestock.[35] With increased population growth and an expanding middle class, these numbers are expected to at least double by 2050.[36] It is argued that in the absence of climate change the livestock sector could support the increased demand for meat and milk without major price increases in this period.[37] However, with climate change already having a significant impact on the environment, livestock production will require major technological and ecological interventions in order to maintain stability.

44. Projections indicate that most climate-related changes are associated with animal deaths.[38] Experts suggest that creative solutions must be sought to mitigate the impact of climate change on livestock, and vice versa. For example, research from Chile, the Netherlands and New Zealand has revealed that the intensification of grassland and forage use may lead to more efficient, more profitable and more sustainable ecosystems that can meet demands for increased dairy and beef production.[39] Nations with emerging economies must increase awareness of the implications of meat consumption,[40] while developed countries should demonstrate a willingness to modify consumption behaviour and avoid food waste.

Impact on the ecosystem, biodiversity and desertification

45. Additional negative consequences of agriculture include loss of biodiversity, soil degradation and depletion of ground and surface water (agriculture consumes 60-70 per cent of freshwater resources globally). Desertification and soil degradation are also major threats to food security. As two thirds of Africa is desert or arid, the continent as a whole is heavily exposed to further desertification. One study predicts that by 2080 as much as one fifth of Africa's farmland will be severely stressed.[41]

46. The link between land degradation and climate change requires attention and focus from the parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and the United Nations Framework Convention on Climate Change. The United Nations Convention to Combat Desertification was originally designed "to forge a global partnership to reverse and prevent desertification/land degradation and to mitigate the effects of drought in affected areas in order to support poverty reduction and environmental sustainability".[42] With some 250 million people and a third of the Earth's land surface affected by desertification, the parties to the Convention have recently made significant strides towards

[35] P. Havlik and others, "Livestock in the XXI century: alternative futures", paper prepared for the Livestock, Climate Change and Food Security Conference, Madrid, 19-20 May 2014.

[36] Ibid.

[37] Ibid.

[38] P. K. Thornton and others, "The impacts of climate change on livestock and livestock systems in developing countries: a review of what we know and what we need to know", *Agricultural Systems*, vol. 101, No. 3 (July 2009).

[39] O. Oenema and others, "Intensification of grassland and forage use: driving forces and constraints", paper prepared for the Livestock, Climate Change and Food Security Conference, Madrid, 19-20 May 2014.

[40] Bailey, Froggatt and Wellesley, "Livestock — Climate Change's Forgotten Sector".

[41] http://foreignpolicy.com/2011/04/25/the-new-geopolitics-of-food/.

[42] Report of the Conference of the Parties to the United Nations Convention to Combat Desertification on its eighth session, Part two (ICCD/COP(8)/16/Add.1), decision 3/COP.8, annex, para. 8.

addressing this challenge in the context of food security and climate change.[43] Given that more than 75 per cent of the world's poorest people live in rural areas and that 2.5 billion people live on small farms and are entirely dependent on agriculture for their survival, the fact that 30 per cent of the Earth's surface is affected by the degradation of fragile drylands poses a significant problem.[44] Poverty and food security should be addressed by adopting sustainable land management practices and the collaborative work by the parties to the two important international conventions is encouraging. The inclusion of a human rights approach to this work will introduce a climate-justice dimension that will be of benefit to people living in acute vulnerability.

VI. The United Nations climate change regime and the right to food

47. The United Nations Framework Convention on Climate Change, the main international treaty governing the global climate change regime, and its implementing mechanism, the Kyoto Protocol, outline the main objectives, principles and guidelines for industrialized and developing States to combat the detrimental effects of climate change.

48. The United Nations Framework Convention requires States to adopt national and regional programmes and policies to mitigate and adapt to climate change (art. 4 (1) (b)) and calls on them to take precautionary measures to anticipate, prevent or minimize its causes (art. 3 (3)). It recognizes that climate change is fundamentally an intergenerational problem and refers to the protection of future generations (art. 3 (1)). Articles 3 and 4 recognize the specific needs of developing countries, especially those that are particularly vulnerable to the adverse effects of climate change.

49. Despite the inclusion in the United Nations Framework Convention of these principles and the acknowledgement of the link between food security and climate change, these elements are not part of the prevailing philosophies in climate change policymaking and many of the principles and commitments outlined in the Convention fall short of what is needed, owing to vagueness and the absence of enforcement mechanisms. For instance, the Compliance Committee of the Kyoto Protocol focuses on monitoring the achievement of emission reduction goals, rather than ensuring accountability for human rights violations.[45] More specifically, the mitigation and adaptation policies implemented under the United Nations Framework Convention do not take into account their effects on vulnerable populations, who are the most food insecure.

50. The impact of climate change on food security was recognized in the United Nations Framework Convention on Climate Change (art. 2), but received little attention until the spike in food prices in 2007. The Intergovernmental Panel on

[43] Chris Arsenault, "Bureaucratic infighting hampers action on droughts: U.N. official", 10 March 2015. Available from www.businessinsider.com/r-bureaucratic-infighting-hampers-action-on-droughts-un-official-2015-3.

[44] Ibid.

[45] Elisabeth Caesens and Maritere Padilla Rodríguez, *Climate Change and the Right to Food: A Comprehensive Study*, Publication Series on Ecology, vol. 8 (Berlin, Henrich Böll Stiftung, 2009).

Climate Change for the first time in its assessments included a section on food security in the *Fifth Assessment Report*. Article 2 of the United Nations Framework Convention states that ecosystems must be allowed sufficient time to adapt naturally to climate change so as to "ensure that food production is not threatened". Several international organizations have also acknowledged the link between food security and climate change. Nevertheless, the inclusion of a rights-based approach to food security has yet to be realized.

51. As early as 1999, in its general comment No. 12, the Committee on Economic, Social and Cultural Rights acknowledged that "even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals". In accordance with the International Covenant on Economic, Social and Cultural Rights, most States accept the responsibility for fulfilling the right to food, designing and implementing policies that support its progressive realization and ensure access to adequate food. In the context of climate change, States must avoid policies and actions that undermine people's ability to produce their own food or to access food for themselves and their families.[46]

52. States must also endeavour to support policies that limit and overcome negative effects on the right to food. A human rights framework requires all States to seek to reduce harmful emissions into the global atmosphere, with a view to reducing their negative effect on the enjoyment of human rights. In addition, in its statement on the world food crisis (E/C.12/2008/1), the Committee on Economic, Social and Cultural Rights pressed States parties to adopt "strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture". This statement is in harmony with article 2 of the United Nations Framework Convention on Climate Change. Unfortunately, while it does mention the strategies that States should employ to develop mitigation and adaptation strategies, the United Nations Framework Convention refers to the use of "appropriate methods" to minimize "adverse effects on the economy, on public health and on the quality of the environment" (art. 4 (1) (f), rather than referencing human rights.

53. Since 2008, the Human Rights Council has regularly highlighted the negative implications of climate change on human rights. Furthermore, at the request of the Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) presented a report in 2009 that addressed the adverse effects of climate change on specific rights, including the direct relationship between the right to adequate food and climate change (A/HRC/10/61, paras. 25-27). The Council reiterated the negative impact of climate change on the right to food in subsequent resolutions adopted in 2009, 2011, 2014 and, most recently, in June 2015.[47]

54. In 2010, the States parties to the United Nations Framework Convention on Climate Change, citing Human Rights Council resolution 10/4, agreed, in the

[46] Olivier De Schutter, Mary Robinson and Tara Shine, "Human rights: their role in achieving climate justice and food and nutrition security", paper presented at the conference entitled "Hunger, nutrition, climate justice 2013 — A new dialogue: putting people at the heart of global development", Dublin, 15-16 April 2013.

[47] Resolutions 10/4, 18/22, 26/27 and 29/15.

outcome document adopted by the Conference of the Parties at its sixteenth session, held in Cancun, Mexico, "that Parties should, in all climate change related actions, fully respect and protect human rights".[48] This was reiterated at the seventeenth session of the Conference of the Parties, held in Durban, South Africa, in November/December 2011.

55. Furthermore, the 2014 report of Working Group II of the Intergovernmental Panel on Climate Change[49] addresses the impacts of climate change on people in the context of food security, health, access to water and personal security, noting that the poor and marginalized are most vulnerable.

56. The negotiations leading up to the twenty-first session of the Conference of the Parties, to be held in Paris in December 2015, the objective of which is to achieve a legally binding, universal agreement on climate change, are an opportunity to ensure that a human rights-based approach is adopted that identifies and satisfies the most pressing needs of vulnerable persons. A new climate agreement should strengthen the commitment made in Cancun and should include clear references to the human rights principles of equality, non-discrimination, accountability, participation, empowerment, solidarity and transparency.

57. In an open letter to the States parties to the United Nations Framework Convention on Climate Change, a number of special rapporteurs, including the Special Rapporteur on the right to food, called on States to ensure full coherence between human rights obligations and efforts to address climate change and to include clear human rights language in the agreement to be concluded in Paris.[50] Most recently, at the closing plenary meeting of the eighth session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, held in February 2015 in Geneva, 18 countries signed a voluntary agreement on human rights and climate action, the Geneva Pledge for Human Rights in Climate Action, pledging to facilitate the sharing of best practice and knowledge between human rights and climate experts at the national level.[51]

Legal and judicial developments

58. Significant political, legal and judicial initiatives have been taken with a view to the next round of climate negotiations to take place in Paris. For instance, a recent study involving 66 countries found that most jurisdictions have taken important legislative steps to mitigate climate change. However, despite the fact that a considerable number of climate change-related laws and regulations have been adopted in several regions, they have rarely been enforced.

59. An example of a State entity reaffirming the human rights obligation to mitigate climate change was the ruling issued by a court in the Netherlands that

[48] Decision 1/CP.16, para. 8.

[49] Available from https://ipcc-wg2.gov/AR5/report/full-report/.

[50] Available from www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf.

[51] The Ad Hoc Working Group was established by decision 1/CP.17 of the Conference of the Parties to the United Nations Framework Convention on Climate Change at its seventeenth session (see FCCC/CP/2011/9/Add.1). The Geneva Pledge was signed by Chile, Costa Rica, France, Guatemala, Ireland, Kiribati, Maldives, Marshall Islands, Micronesia (Federated States of), Mexico, Palau, Panama, Peru, Philippines, Samoa, Sweden, Uganda and Uruguay. The text is available from http://carbonmarketwatch.org/wp-content/uploads/2015/02/The-Geneva-Pledge-13FEB2015.pdf.

ordered the Government to cut emissions by at least 25 per cent in the next five years. The ruling relied on the international no-harm norm, the European Union's approach to the precautionary principle and the Oslo Principles on Global Climate Change Obligations to determine that the Netherlands did not meet its legal obligations to act on climate change. While this was a landmark decision, citizens and civil society around the world are bringing similar legal claims. By the end of 2013, over 420 pieces of climate change litigation had been resolved in the United States of America alone,[52] while in Australia approximately 40 per cent of total litigation is climate related.[53]

VII. Adverse impact of mitigation policies on the right to food

60. Climate change mitigation refers to efforts to reduce or prevent greenhouse gases. Mitigation measures may be problematic when they rely on resources that are currently devoted to food production and have a negative impact on the right to food. One of the most significant examples of this is the production of biofuel as a method of reducing greenhouse gas emissions.

Agriculture for biofuel production

61. Biofuels are biomass-derived fuels designed to replace petroleum. As they depend on soil and water, these resources may be diverted from agricultural purposes and therefore diminish impoverished communities' ability to grow the food they require. In less than a decade biofuel production has increased fivefold and has contributed to high volatility in food prices as well as increases in prices of staple foods.[54] This is of particular concern for low-income countries reliant on international food markets. In recent years, there has been an alarming increase in the number of large-scale land deals for the purpose of producing biofuels.[55] Forced relocations as a result of large-scale land acquisitions and long-term leases pose a particular threat to smallholder farmers and indigenous populations, especially when land rights and tenure are weak. Evidence also indicates that efficient biofuel production depends on capital-intensive farming, which favours large agricultural producers who are better connected to the markets, leaving small-scale farmers in poor countries unable to compete effectively.

62. First-generation biofuels are of particular concern, as they are responsible for developing "food v. fuel conflicts". While the shift towards second-generation biofuels is an improvement, it does not necessarily solve the problem. In seeking to

[52] Meredith Wilensky, "Climate change in the courts: an assessment of non-U.S. climate litigation", academic paper prepared for the Sabin Center for Climate Change Law of Columbia Law School in 2015. Available from https://web.law.columbia.edu/sites/default/files/microsites/climate-change/white_paper_-_climate_change_in_the_courts_-_assessment_of_non_u.s._climate_litigation.pdf.

[53] Ibid.

[54] High Level Panel of Experts on Food Security and Nutrition, "Biofuels and food security", June 2013. Available from http://www.fao.org/3/a-i2952e.pdf.

[55] Kerstin Nolte, Martin Ostermeier and Kim Schultze, "Food or fuel: the role of agrofuels in the rush for land", *GIGA Focus*, International Edition English, No. 5 (Hamburg, Germany, German Institute of Global and Area Studies 2014). Available from http://www.giga-hamburg.de/en/system/files/publications/gf_international_1405_0.pdf.

achieve positive greenhouse gas mitigation outcomes, climate-mitigation strategies deprive some of the poorest people on the planet of food security.[56]

Bioenergy

63. Biomass energy can be derived from (usually woody) feedstock by means of processes that run the gamut from simple combustion in a cookstove to biochemical conversion. Bioenergy may be able to displace fossil fuels. However, a critical approach is required to combining biomass energy with carbon capture and storage. This technology involves growing crops that absorb carbon dioxide, burning them to produce energy and capturing and storing the carbon that results from the combustion. The main challenges facing the bioenergy industry is avoiding negative impacts on food production or ecosystem services.

Water diversion for climate-friendly energy production

64. Other examples of reallocation of resources for the benefit of clean energy at the expense of food security are cleaning coal and constructing dams for the generation of hydroelectric power. Cleaning coal requires large amounts of water that could otherwise be used for irrigating arable land, while the construction of dams for hydroelectricity may affect water supply for agricultural activities downstream and also flood land that could otherwise be used for food production.[57] Indeed, any mitigation and adaptation policies that affect water resources must carefully consider competing water uses and the various implications for food security. Measures that mitigate one type of adverse impact could exacerbate another.[58]

65. Hydropower is presented as a climate-friendly option and a way to increase water storage infrastructure. However, hydropower can also create conflicts between water for energy and water for agriculture.[59] For example, indigenous communities have raised serious objections to the hydroelectric plant in the Alta Verapaz region in Guatemala owing to violations of environmental and human rights norms. The affected people allege that they were never consulted, as required by Guatemalan law and the rules of the clean development mechanism registration process.[60] Another example is the Barro Blanco Hydroelectric Power Plant Project in Panama. It has significantly affected the Ngabe Bugle people who live alongside the Tabasara River. Construction commenced despite evidence that it would impact cultural and religious sites and access to medicinal plants highly valued by the Ngabe people.[61]

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[56] T. Searchinger and others, "Do biofuel policies seek to cut emissions by cutting food?", *Science*, vol. 347, No. 6229 (27 March 2015).

[57] Caesens and Padilla Rodriguez, *Climate Change and the Right to Food*, chap. VI, note 51.

[58] High Level Panel of Experts on Food Security and Nutrition, "Water for food security and nutrition", chap. II, note 16.

[59] Ibid., para. 1.5.2.

[60] Adriana Herrera Garibay and Fabrice Edouard, *Tenure of Indigenous Peoples Territories and REDD+ as a Forestry Management Incentive: The Case of Mesoamerican Countries* (Rome, FAO, 2012). UN-REDD is the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in developing countries.

[61] Carbon Market Watch, "Local realities of CDM projects: a compilation of case studies", November 2013. Available from http://carbonmarketwatch.org/wp-content/uploads/2013/11/case-studies-06-mail-2-dec-2013_final_light.pdf. CDM refers to the clean development mechanism.

Emission reduction strategies

66. Climate change mitigation strategies that aim to reduce emissions from land use may also have a negative impact on food production methods. The clean development mechanism was established to encourage industrialized States to fund carbon reduction projects in developing countries. It has generated many projects and in 2012 it was estimated to have generated approximately $215 billion for developing countries. Yet the mechanism has been criticized for failing to ensure human rights protections and to prevent the approval of projects that have negative human rights impacts, including on food security, owing to a lack of a rigorous impact assessment procedure for prospective projects.[62] Activities have been proposed that would change land use patterns to reduce carbon emissions or promote carbon capture and storage; it is claimed that such projects have led to the displacement of small-scale farmers and indigenous peoples and that farmers may not be directly compensated for the carbon credits derived from their activities.[63]

67. The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation encourages developed countries and their companies to make investments in forest preservation in developing countries and provides incentives for developing countries to sustainably manage their forests and enhance forest carbon stocks. However, concerns have been raised about the validity of this process, as communities that live in and are dependent on forests for their livelihoods and subsistence have been negatively affected by some of the projects, especially those initiated without the consent of the population concerned.[64]

68. Recent evidence from the REDD-plus mechanism shows that smallholder coffee farmers and forest communities can make a significant contribution to the mitigation of climate change. However, existing mechanisms have failed to offer effective avenues for benefiting these actors and in some cases even threaten to undermine their livelihoods.[65] The principal method for compensating these actors would be a system of carbon credits; however, such a system is unlikely to be suitable to support the mitigation potential of traditional agriculture given the high transaction costs and low returns. In some cases, participating in the REDD-plus process has backfired terribly. For example, according to reports received, the indigenous Dayak community, which participated in the Kalimantan Forests and Climate Partnership through the REDD-plus process, lost access to the forest and its resources and questions have been raised as to whether the project adhered to the requirement of prior informed consent.[66] Similarly, a massive palm oil farm in Cameroon has inflamed tensions between locals, investors and the State as a result

[62] International Bar Association, Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (London, International Bar Association, July 2014).

[63] Ibid.

[64] Ibid.

[65] Andrew Davis and V. Ernesto Méndez, "Prioritizing food security and livelihoods in climate change mitigation mechanisms: experiences and opportunities for smallholder coffee agroforestry, forest communities and REDD+", *PRISMA, Salvadoran Research Program on Development and Environment*, Policy Brief, 2011.

[66] "In the REDD: Australia's carbon offset project in Central Kalimantan", Friends of the Earth, December 2011.

of environmental destruction and resource conflicts as well as uncertainties about who will ultimately be the beneficiary of the carbon credits.[67]

69. While some indigenous and small farmer groups support REDD-plus solutions, others reject these and all other market solutions and urge global organizations to recognize and support the sustainable agriculture of family farmers and indigenous people as a way of maintaining global biodiversity and mitigating greenhouse gas emissions. In fact, some observers contend that, if well supported and scaled up, projects involving peasants and indigenous peoples could reduce current global emissions by 75 per cent by increasing biodiversity, recuperating soil organic matter, replacing industrial meat production with small-scale diversified food production, expanding local markets, halting deforestation and practising integrated forest management.[68]

VIII. Adaptation policies and measures

70. Climate change adaptation policies aim to reduce the vulnerability of social and biological systems by preventing or minimizing the damage caused. Adaptation policies related to food production should focus on helping farmers reduce their exposure and vulnerability to these impacts and strengthen their resilience.

71. The United Nations Framework Convention on Climate Change requires wealthier nations to provide "new and additional financial resources" (art. 4 (3)) to poorer counties to allow them to manage climate change, but the provision has not had a meaningful impact. Article 11 of the Convention establishes a financial mechanism to provide funds to parties for the effective implementation of the Convention. Three funds have been established: the Special Climate Change Fund, the Least Developed Countries Fund and the Adaptation Fund. However, these mechanisms have failed to secure adequate funding as they are based largely on voluntary pledges and contributions from States parties. There is also a lack of public participation in terms of the allocation of funds.[69] Various funding options have been proposed, including levies on aviation and shipping, carbon taxes, a tax on the carbon market and a financial transactions tax, but none has yet gained significant support.

72. The challenges are huge and each region is facing its own climate change issues. Approaches to food security and adaptation to climate change must be mutually supporting; they must have the common objective of empowering socially and economically excluded groups to reduce their vulnerability and increase their resilience. Climate change is leading to significant increases in the price of food; therefore, because the poor in the global South devote up to 80 per cent of their budget to food, the economically disadvantaged are much more vulnerable in this regard than those in the developed world. Public and private investments that improve options for the poor, such as improved agricultural production technologies, better-adapted financial instruments, diversified income opportunities, broader economic adjustments, the creation of specialized markets for the poor,

[67] Christiane Badgely, "When Wall Street went to Africa", *Foreign Policy* (11 July 2014).

[68] Miguel A. Altieri and Victor Manuel Toledo, "The agroecological revolution in Latin America: rescuing nature, ensuring food sovereignty and empowering peasants", *Journal of Peasant Studies*, vol. 38, No. 3 (July 2011).

[69] Caesens and Padilla Rodriguez, *Climate Change and the Right to Food*, chap. VI, note 51.

development of local knowledge and expansion of irrigation and storage infrastructure will likely be critical in adapting food security to a changing climate.

IX. Agroecology: an alternative to industrial agriculture

73. It is important that adaptation policies focus on ensuring the right to food for both present and future generations through sustainable agricultural practices. This implies moving away from industrialized agricultural practices. Agroecology is an ecological approach that integrates agricultural development with relevant ecosystems. It focuses on maintaining productive agriculture that sustains yields and optimizes the use of local resources while minimizing the negative environmental and socioeconomic impacts of modern technologies.[70] Recycling nutrients and energy rather than augmenting nutrients with external inputs, integrating crops and livestock and improving interactions and productivity throughout the agricultural system rather than focusing on individual species are also important components of agroecology.[71] It is a system that foregoes the use of synthetic inputs, such as synthetic fertilizers and pesticides, veterinary drugs, genetically modified seeds and breeds, preservatives, additives and irradiation.[72]

Benefits of agroecology on soil quality, plant health and biodiversity

74. Small-scale farmers and agroecological practices play a central role in conserving crop diversity and developing varieties of plants that are adapted to a range of weather conditions, including droughts. During a drought in Guangxi, China, in 2010 when many of the modern crop varieties (hybrids) were destroyed, the better-adapted traditional varieties, such as drought- and wind-resistant maize, were able to survive.[73] When a hurricane in West Bengal, India, in 2009 turned large swathes of farmland into salt ponds, only traditional salt-tolerant varieties of rice, preserved by a handful of farmers, survived.[74] By returning to traditional varieties and planting different varieties, farmers have become more resilient to the impact of climate change and more independent from commercial seed breeders, and can avoid using expensive chemical inputs that are required for modern hybrid seeds.[75]

Increased resilience of crops and farms

75. Locally developed crops have been shown to be extremely adaptable and robust because they have been bred over generations specifically to cope with

[70] See http://nature.berkeley.edu/~miguel-alt/what_is_agroecology.html.

[71] Olivier De Schutter, "Commentary VI: Agroecology: a solution to the crises of food systems and climate change", in *Trade and Environment Review 2013: Wake up Before it is Too Late: Make Agriculture Truly Sustainable Now for Food Security in a Changing Climate* (Geneva, United Nations Conference on Trade and Development, 2013).

[72] See www.fao.org/organicag/oa-faq/oa-faq1/en/.

[73] Krystyna Swiderska and others, "The role of traditional knowledge and crop varieties in adaptation to climate change and food security in south-west China, Bolivian Andes and coastal Kenya", paper prepared for the United Nations University-Institute for the Advanced Study of Sustainability workshop "Indigenous peoples, marginalized populations and climate change: vulnerability, adaptation and traditional knowledge", Mexico City, 19-21 July 2011.

[74] Debal Deb, "Valuing folk crop varieties for agroecology and food security", *Independent Science News* (26 October 2009).

[75] Krystyna Swiderska and others, "The role of traditional knowledge and crop varieties".

difficult ecological and social conditions.[76] For example, "farmer rice varieties" are often more productive than imported varieties of rice and can grow with less input than modern varieties and require less maintenance.[77] Furthermore, research has shown that farms run on agroecological principles can be more resilient in response to natural disasters such as hurricanes. Farms in Nicaragua, Honduras and Guatemala that relied on sustainable agricultural methods suffered considerably less damage than conventional farms following Hurricane Mitch in 1998, with sustainable farms retaining up to 40 per cent more topsoil and suffering less economic loss than neighbouring conventional farms.[78] Similar studies conducted in Mexico following Hurricane Stan and in Cuba following Hurricane Ike had similar findings.[79] Agroecological farms were also able to recover faster after the hurricane.[80]

Proven success of agroecology

76. Agroecology is particularly beneficial and well suited to the needs of poor rural communities, as it is relatively labour intensive, most effectively practised on small plots of land and relies on locally produced inputs, thereby reducing dependence on access to external inputs and on subsidies. It is also of particular benefit to vulnerable groups such as smallholder farmers, women and indigenous peoples, owing to their reliance on local inputs and practices. The shift being advocated builds on the skills and experience of the world's small farmers. Farmers living in harsh environments in Africa, Asia and Latin America have developed traditional knowledge and skills that facilitate resilience and sustainability.[81] One of the virtues of agroecology is that it combines local knowledge with innovative technology.

77. Brazil's agroecology policies have already experienced success. Approximately 100,000 family farms have adopted agroecological farming practices. These farms have had average yield increases of 100-300 per cent and demonstrated greater resilience to irregular weather patterns.[82] Brazil has also developed programmes that provide access to low-interest credit for family farmers and also offered technical support for 2.3 million families in 2010. It has stimulated

[76] Alfred Mokuwa and others, "Robustness and strategies of adaptation among farmer varieties of African rice (*Oryza glaberrima*) and Asian rice (*Oryza sativa*) across West Africa", *PLoS ONE*, vol. 8, No. 3 (1 March 2013).

[77] SciDev.Net, "Local rice makes the grade in West Africa", 25 March 2013. Available from http://www.scidev.net/global/biotechnology/news/local-rice-makes-the-grade-in-west-africa.html.

[78] Eric Holt-Giménez, "Measuring farmers' agroecological resistance after hurricane Mitch in Nicaragua: a case study in participatory, sustainable land management impact monitoring", *Agriculture, Ecosystems and Environment*, vol. 93, Nos. 1-3 (December 2002).

[79] Stacy M. Philpott and others, "A multi-scale assessment of hurricane impacts on agricultural landscapes based on land use and topographic features", *Agriculture, Ecosystems and Environment*, vol. 128, Nos. 1-2 (October 2008).

[80] Peter Michael Rosset and others, "The *campesino*-to-*campesino* agroecology movement of ANAP in Cuba: social process methodology in the construction of sustainable peasant agriculture and food sovereignty", *Journal of Peasant Studies*, vol. 38, No. 1 (2011). ANAP stands for Asociación Nacional de Agricultores Pequeños (National Association of Small Farmers).

[81] Kaplan, Ifejika-Speranza and Scholz, "Commentary VII".

[82] Avery Cohn and others, eds., *Agroecology and the Struggle for Food Sovereignty in the Americas* (International Institute for Environment and Development, Yale School of Forestry and Environmental Studies and Commission on Environmental, Economic and Social Policy, 2006).

agroecological systems by providing technical support for crop diversification techniques and irrigation systems.[83]

78. Similarly, in Cuba, farmers have embraced agroecology through initiatives that support the sharing of experiences and the creation of networks. From 1995 to 2004, Cuba increased its food production by 37 per cent through agricultural development policies, farmer networks and sharing of information rather than through a reliance on the use of chemical fertilizers and heavy machinery.[84]

79. Agroecology is beneficial not only for developing countries. In September 2014, the National Assembly of France adopted a project for the future of agriculture, food and forests that calls for the implementation of agroecology through agricultural initiatives that take the environment into consideration. Under the multi-year project agroecological actions will be undertaken that aim to improve the economic, social and environmental performance of farming operations and promote innovation and agricultural experimentation.[85] An example of a local initiative is the law passed by the City of San Francisco, California, requiring mandatory recycling and composting of organic material rather than sending it to landfills. The city currently diverts 80 per cent of its waste to recycling and composting, with the goal of "zero waste" by 2020.[86]

80. Despite the availability of widely endorsed good practices, many Governments, development agencies, donors and policymakers are still focusing on large-scale, high-input solutions that marginalize small-scale farmers because of existing political biases, trade rules and policies that limit the ability of Governments to support smallholder farmers and agroecological practices through investment, research funding and legal solutions to land tenure.

81. Food security involves much more than just food production. However, agribusiness investment is increasingly being seen as the only way to address hunger and poverty in a time of climate change. Within this context, "climate-smart agriculture" was introduced as a series of adaptation policies that sustainably increase productivity and resilience, while reducing greenhouse gas emissions and enhancing the achievement of national food security and development goals. These claims are questioned by several non-governmental and peasant organizations on basis of the absence of criteria to assess sustainability; the absence of a right to food concept; a limited conception of resilience; the misplaced focus on climate change mitigation; and the failure to recognize the historical responsibility of the developed countries for producing greenhouse gas emissions. More importantly, there is a lack of clarity around the concept of climate-smart agriculture that could be misleading,

[83] Rafael Guimaraens and Clarita Rickli, *A New Rural Brazil: Ministry of Agrarian Development 2003-2010* (Brasilia, Ministry of Agrarian Development, 2010).

[84] Ben McKay, "A socially inclusive pathway to food security: the agroecological alternative", *International Policy Centre for Inclusive Growth Research Brief*, No. 23 (19 June 2012).

[85] *Projet de loi d'avenir pour l'agriculture, l'alimentation et la forêt, texte adopté no. 402* (11 September 2014).

[86] San Francisco Department of the Environment, Mandatory Recycling and Composting, ordinance No. 100-09 (9 June 2009).

offering leeway for socially and environmentally detrimental practices to be pursued under the guise of climate-smart agriculture.[87]

X. Conclusions and recommendations

Conclusions

82. **Climate change poses unique and distinct threats to all aspects of food security, including availability, accessibility, adequacy and sustainability. Moreover, these threats are poised to affect a huge number of people, with 600 million additional people potentially vulnerable to malnutrition by 2080. Manifestations of climate change, such as an increase in the frequency and intensity of extreme weather, global warming, a rise in sea levels and a decrease in the availability of water, have significant impacts on food security. As a result, crop failures and adverse impacts on livestock, fisheries and aquaculture will have an overall negative effect on people's livelihoods, with climate-induced food price volatility, nutritional deficiencies and diminishing quality of land and soil suitable for agricultural production a daunting reality. The consequences of failing to enact appropriate policies will pose a threat to global peace and security. As we are all living ever more interconnected lives, climate change should not be considered as affecting only those living in remote places.**

83. **The imperative to feed the world in a time of climate change resonates strongly with food policymakers and has resulted in a push for large-scale agricultural models to respond to the future demand for food. However, it is has been proven that more food production does not necessarily result in fewer people suffering from hunger and malnutrition. The world has long produced enough food, sufficient not only to meet the caloric requirements of the existing global population of over 7 billion, but also to meet the needs of a population expected to reach 9 billion in 2050. Hunger and malnutrition are a function of economic and social problems, not production. Moreover, not all of the calories produced go to feed humans: one third are used to feed animals, nearly 5 per cent are used to produce biofuels and as much as one third are wasted all along the food chain.**

84. **A strong "agropessimism" has emerged, partly as a result of the significant adverse effects of agricultural activities responsible for triggering climate change and degrading natural resources and partly as a result of the difficulty of the task of feeding a growing global population in the face of substantial challenges. As a result, the view has emerged that humankind will not be able to feed itself unless current industrial modes of agriculture are expanded and intensified.**

85. **This approach is wrong and counterproductive and will only serve to exacerbate the problems experienced by the current mode of agriculture. Rather, agriculture and food systems need to be reformed to ensure that they are more responsive to the challenges of climate change and environmental degradation, as evidenced by reduced reliance on fossil fuel-intensive**

[87] Coopération internationale pour le développement et la solidarité (CISDE), "Climate-smart agriculture: the emperor's new clothes?", CIDSE discussion paper (October 2014). Available from www.cidse.org/articles/item/640-climate-smart-agriculture.html.

production methods. More importantly, the reform should ensure that the right to adequate food of people is protected through appropriate levels of production as well as equitable access and just distribution.

86. **It is therefore necessary to recognize the existence of inadequate mitigation and adaptation policies within the climate change regime and to ensure that the right policies are promoted through technical and legal solutions. Food security and adaptation to climate change are mutually supportive; in many situations, strategies to reduce vulnerability to climate change will also increase food security.**

87. **As outlined in the present report, there is a need to encourage a major shift from current industrial agriculture to transformative activities such as conservation agriculture (agroecology) that support the local food movement, protect smallholder farmers, empower women, respect food democracy, maintain environmental sustainability and facilitate a healthy diet.**

88. **Finally, because the harm caused by climate change is felt predominantly by people and regions that are minimally responsible in the first place, climate change policies should be designed to minimize, if not overcome, these fundamental injustices. Some of the climate change policies described in the report, justified on the grounds that they help to reduce greenhouse gas emissions, undermine human rights. Unequal capabilities and exposure to the dangers make climate change the biggest human rights and justice problem of our time; solving it should be obligatory, not voluntary and aspirational. Whether there will be sufficient political will to implement the recommended shift in agricultural policy is the haunting uncertainty that casts a long shadow over the future of food security and the realization of the right to food. There are two dominant conclusions in the present report, the necessity of encouraging agroecological approaches to food security and the need to integrate the commitment to climate justice and human rights in the climate change regime, which cannot be realized without the support of civil society.**

Recommendations:

89. **In this context, the Special Rapporteur recommends that:**

(a) **Parties to the United Nations Framework Convention on Climate Change respect, protect, promote and fulfil human rights in all climate change-related actions and ensure that human rights language is included in the climate agreement to be reached in Paris;**

(b) **Policy coherence at the international level be ensured by fostering cooperation between the parties to the United Nations Framework Convention on Climate Change and other international treaties relevant to climate change and food security, while providing a human rights approach in the entire agenda to promote climate justice and the right to food;**

(c) **Public policies that promote subsidies and production targets resulting in artificial increases in the demand for biofuel production be reviewed in light of their negative impact on the right to food and questionable impact on emission reduction;**

(d) A separate category of "climate refugees" be recognized in international law and the necessary legal adjustments made to avoid further human catastrophe;

(e) A human rights impact assessment be carried out before mitigation and adaptation projects are authorized and public participation therein facilitated;

(f) Prior "zoning" exercises be undertaken to ensure that land used for food production is not threatened;

(g) Alternative energy and mitigation policies, including biofuel and biomass mandates, be scaled back to eliminate perverse incentives and that strict sustainability criteria be applied for both first- and second-generation biofuels;

(h) Alternative energy and other non-food production agriculture that requires the acquisition of large tracts of land be regulated and local communities protected against asymmetrical negotiations with multinational companies while extraterritorial implementation of human rights is put in place;

(i) The pivotal roles in food production of smallholder farmers, women and indigenous and local communities be recognized and protected and their acute vulnerability to climate change acknowledged;

(j) Knowledge and information as well as technology transfer and appropriate training in relation to changing climatic conditions be prioritized and available to smallholder farmers, women and indigenous communities;

(k) Social protection measures be prioritized as a means of eliminating hunger and avoiding food insecurity in a time of climate change;

(l) Scientific research institutions and Governments greatly increase financial allocations to agroecology so as to demonstrate that it can feed the world without destroying the environment and at the same time reduce the adverse impact of climate change;

(m) Governments evaluate their agricultural and trade policies to avoid price volatility and financial vulnerabilities in a time of climate change;

(n) The adaption of culturally appropriate diets that rely less on resource-intensive food be promoted by civil society and Governments as a means of reducing excessive consumption and eliminating food waste.

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University for Peace

University for Peace

Report of the Secretary-General

Summary

The University for Peace has been training leaders for peace for the past 35 years. It is the world's leading educational institution in the field of peace and conflict resolution, in its pursuit of the mandate given to it by the General Assembly in 1980. As it prepares to celebrate its thirty-fifth anniversary, the University continues its pursuit of academic excellence through the systematic and critical study, understanding and analysis of the causes of multiple problems affecting human and global well-being; the exploration and formulation of strategies and practices in various contexts to address such problems and contribute to the processes of peacebuilding and peace formation; the cultivation of modes of thinking, inquiry and pedagogy that are critical, multidisciplinary, interdisciplinary, integrative, empowering and transformative; and the development of a diverse, inclusive, ethical, creative community of learning, sharing, networking and solidarity on campus and in the global environment.

The new international context and framework of interaction between major international actors have obliged the University to transform itself and assess how it can contribute effectively and successfully to adapting to this new dynamic through education. With our contribution to the work of the United Nations and our vision of the role of other key civil society actors, it is essential that we rethink the University's vision, position and tasks within the context of this evolving international system. The various contributions of the University provide new generations of men and women with the knowledge and skills to influence processes of change in favour of peace within the United Nations system, States and civil society organizations, all of which increasingly require specific knowledge of how to address the tensions, threats and conflicts in today's international system.

* A/70/150.

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The present report summarizes the activities and development of the University, as well as its successes and challenges, during the period 2012-2015.

The University is undergoing a process to reinvent and renew its activities within the context of both its thirty-fifth anniversary and the seventieth anniversary of the United Nations. One of the most significant changes pertains to the recent process of academic reform to align the University's activities with those being prioritized by the United Nations and reinforce its academic excellence. The University is currently implementing close to a dozen joint academic programmes with high-level universities in various parts of the world.

More than 1,600 alumni of the University, who originate from almost every Member State of the United Nations, are working for peace in every region of the world.

The current international context demands an expansion of training and educating for peace, especially with regard to open and increasingly more complex conflicts, interrelations between local, national, regional and global spheres and strong but ominous links between politics and criminal activity. The University provides such a response. In addition, the explicit and consistent support of the States Members of the United Nations will be essential in carrying out the University's mission. This will only be accomplished through the ongoing academic training of future leaders of Governments, non-governmental organizations and the private sector on peaceful conflict resolution and the relationship between peace, development, human rights and environmental protection as the foundation for economic development and increased equality. For the University to successfully transform itself in order to have a greater impact on future generations of world leaders, the General Assembly may consider augmenting the University's capacity by providing resources through assessed budgetary contributions for a limited period of five years, until the transformation is accomplished and extrabudgetary resources become available.

With the support and collaboration of the States Members of the United Nations, the Secretariat and the rest of the United Nations system, the University will continue to prepare new generations for their fundamental role and responsibility in resolving conflicts and promoting opportunities for cooperation for peace.

I. Introduction

1. The University for Peace was established pursuant to General Assembly resolution 35/55, "with a clear determination to provide humanity with an international institution of higher education for peace and with the aim of promoting among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate cooperation among peoples and to help lessen obstacles and threats to world peace and progress, in keeping with the noble aspirations proclaimed in the Charter of the United Nations". It was invited to establish its main campus in Costa Rica, which has served as its host country ever since.

2. The present report, which is submitted to facilitate consideration by the General Assembly of the item entitled "University for Peace", pursuant to General Assembly resolution 64/83, contains a summary of the progress made by the University during the period 2012-2015 and highlights both its opportunities for growth and its challenges.

3. The present report includes an overview of the main activities at the University's campus in Costa Rica, as well as those carried out by its regional centres and affiliated institutions. It also highlights the University's relationships with the United Nations and other United Nations-related bodies, as well as with the host country. The report highlights the University's recent process of academic reform, its current financial situation and its short-term and long-term development strategy. It also describes the substantial progress made towards developing high-quality education and training programmes and relationships with other academic institutions to reach as many interested students as possible, as well as the University's efforts to relaunch its image and attract new partners and donors.

4. The General Assembly, in its resolution 64/83, noted the progress made by the University in developing and carrying out innovative programmes on critical subjects related to peace and security, and requested the Secretary-General to consider ways to further strengthen cooperation between the United Nations and the University. In addition, the Assembly encouraged Member States, intergovernmental bodies, non-governmental organizations (NGOs) and interested individuals to contribute to the programmes, the trust fund, when established for the University, or the core budget of the University to enable it to continue to perform its valuable work.

II. University for Peace in 2015

A. Thirty-five years of the University

5. During the past 35 years, the University has been guided by the mandate of the General Assembly and has sought to support the main objectives of the United Nations in matters of peace and international security through the training of new generations of professionals with the ability to resolve conflicts through understanding, tolerance and coexistence, on the basis of cooperation and the values of the United Nations system.

6. The University has a proven record of contributing to the educational training of leaders in the field of peace and conflict resolution related to the four basic pillars of the United Nations: peace and security, human rights, development and the

rule of law. More than 1,600 alumni from 112 countries have leveraged their training, experience and skills and used them to have a positive impact in their professional activities. The majority of our students and alumni are women, who play a critical role in peacebuilding and peacekeeping operations at both the local and the international levels.

7. Conflict and its impact are increasingly complex. Understanding the various motivations of key international actors is an urgent task in our globalized world. We require more knowledge to better educate those in charge of resolving and transforming conflicts, understanding the links between the political, social, economic, cultural, religious and ethnic dimensions and dealing with criminal activity in the generation and development of conflicts. In addition, a gender focus is required to analyse and search for solutions. The people responsible for designing and envisioning the role of the University stressed that the persistence of war ends with education. Similarly, they reaffirmed that peace was an indispensable obligation attained primarily through education. Disarmament efforts are essential, but they cannot be successful without a parallel effort in terms of education, which represents the main challenge to nations and humankind in the twenty-first century.

8. The thirty-fifth anniversary of the University will be commemorated with an international high-level seminar to be held on 3 and 4 December 2015. The topics will reflect the new priorities of the United Nations and, more generally, new risks, challenges and threats in the international system, as well as the opportunities for collaboration and cooperation.

B. Institutional changes

9. In June 2013, the Council of the University elected a new rector, Francisco Rojas Aravena, who has significant experience in the field of international relations and international security. His tenure will expire in June 2018.

10. The Council is composed of 17 members, 10 of whom are appointed by the Secretary-General and 7 ex officio members. The current members include the following individuals appointed by the Secretary-General: Aristides Royo (Panama), President of the Council; Hal Klepak (Canada), Vice-President of the Council; Jean Arnault (France); Alicia Bárcena (Mexico); Jean Jacques Graisse (Belgium); Wakako Hironaka (Japan); Monica K. Juma (Kenya); Roza Otunbayeva (Kyrgyzstan) and Fernando Blasco (Argentina), as well as the following ex officio members: Francisco Rojas Aravena (Chile), University Rector; Judy Cheng-Hopkins (Malaysia), Chancellor; Pilar Alvarez-Laso (Mexico), United Nations Educational, Scientific and Cultural Organization (UNESCO) Director-General Representative; David Malone (Canada), Rector of the United Nations University; Juany Guzman (Costa Rica), Representative of the Government of Costa Rica; and Mercedes Peñas (Spain), Representative of the Government of Costa Rica and First Lady of Costa Rica.

C. Rodrigo Carazo campus

11. The University's main campus, named after the late former President of Costa Rica and University founder Rodrigo Carazo, is located 30 kilometres south-west of San José, within a nature reserve. The University's campus comprises 303 hectares, 300 of which represent the last remnant of primary forest in the central valley of

Costa Rica. The campus comprises 2 per cent of the protected zone of El Rodeo, which is part of the Mora municipality, and is home to various fauna, including monkeys, deer, reptiles, butterflies and more than 300 species of birds, as well as more than 100 varieties of trees. The protection of this forest represents a great opportunity for the development of scientific studies on tropical biodiversity.

12. The peace park is open to the general public and offers recreational areas and the natural beauty of the area's biodiversity.

13. The park's monument to disarmament, work and peace symbolizes the fundamental values of the University and the main traditions of Costa Rica that have centred on these values during the past 70 years.

D. Academic reform

14. During the 2014-2015 academic year, the University decided to undergo a process of academic reform in an effort to reinvent and renew itself in order to contribute to its goal of providing future generations with the knowledge, skills and tools to influence processes of change in favour of peace and development within the United Nations system, States and other sectors that require increasingly more specific knowledge about how to address current tensions, threats, risks and conflicts. Furthermore, in the light of substantial changes at the United Nations to commemorate its seventieth anniversary, it has become essential for the University to examine its academic structure and ensure that it aligns with the four pillars set out in the Charter of the United Nations, the guidelines of the General Assembly and the new demands within the field of peace and conflict resolution and transformation.

15. In order to address the set of tasks involved in carrying out the academic reforms required by the University, its Council has approved the partial implementation of the reform in the 2015/16 academic year to allow for adjustments to be made to the various academic programmes, followed by a full implementation beginning in the 2016-2017 academic year.

16. The full implementation of academic reform will be attained through the direct and effective participation of the Council, University authorities, faculty, students, alumni and staff. Current University policy promotes and affirms the participation of all stakeholders directly related to the University in its mission to promote peace and international stability.

1. Master's degree programmes

17. The University continues to offer innovative master's degree programmes in areas related to peace studies, international law, gender studies, the environment and sustainable development. Currently, eight master's degree programmes are offered at the main campus in gender and peacebuilding; international peace studies; media, peace and conflict studies; peace education; international law and human rights; international law and the settlement of disputes; environment, development and peace, with specializations in environmental security and governance, sustainable natural resource management, climate change policy or sustainable food systems; and responsible management and sustainable economic development. The themes of gender, race, religious, class and ethnic perspectives, as well as those related to the

lesbian, gay, bisexual and transgender community, are incorporated into the academic programmes.

18. As of 2011, the University offers an online master's degree programme in sustainable peace in the contemporary world. Through interactive online discussions between instructors and students from around the world, this programme gives global access to mid-career professionals who, for various reasons, are unable to study on campus. Students can decide to take these online courses as part of the online master's degree programme or as individual courses for credit, certificate programmes or training.

2. Special programmes

19. The University maintains dual-degree, dual-campus and joint programmes with high-level universities around the world. These interesting options permit students to obtain more than one degree by studying at more than one institution. Currently, the University offers the following joint programmes with partner universities:

Dual degree/campus programmes

(a) American University, United States of America: American University students receive both a master's degree in international affairs from American University and a master's degree in natural resources and sustainable development from the University for Peace;

(b) Hankuk University of Foreign Studies, Republic of Korea: both institutions award a master's degree, depending on the student's area of concentration, in the fields of law, communications (media) and sustainable development;

(c) Ateneo de Manila University, the Philippines: with the support of The Nippon Foundation, students in this programme can choose to pursue a master's degree in global politics from Ateneo de Manila University or a master's degree from the University for Peace;

(d) Brandeis University, United States of America: students from Brandeis University receive a master's degree in coexistence and conflict from Brandeis University and a master's degree in international law and human rights from the University for Peace. University for Peace students can apply to Brandeis University to obtain a degree in coexistence and conflict;

(e) Pontificia Universidad Javeriana, Colombia: students from Pontificia Universidad Javeriana receive a master's degree in human rights and culture of peace (taught in Spanish), in addition to the possibility of applying to the master's degree programme at the University for Peace and receiving a second master's degree. University for Peace students can apply to the Pontificia Universidad Javeriana to obtain a master's degree in human rights and culture of peace;

Joint master's degree programmes

(a) International University of Monaco, Monaco: students enrolled at the International University of Monaco can obtain a master's degree in sustainable

peace through sports and can take online courses from the University of Peace. They also have the option to study at the main campus of the University;

(b) UNESCO-IHE Institute for Water Education and Oregon State University, United States: the University for Peace will award students a master's degree in environment, development and peace with a specialization in environmental security. For its part, the UNESCO-IHE Institute for Water Education will award a Master of Science degree in water, cooperation and peace. In addition, students will have the option to continue at Oregon State University for a Juris Doctor or Master of Laws degree;

(c) Addis Ababa University, Ethiopia: students enrolled in this programme receive a master's degree in peace and security.

20. The University will continue, wherever possible, to develop similar programmes to expand its reach around the world with key postgraduate institutions and think tanks whose work supports the mission and values of the United Nations.

3. Doctoral programme

21. The University offers a doctoral programme in peace and conflict studies. It is designed for talented researchers who will pursue innovation in the field of peace studies. In addition, practitioners can transform their experiences into scientific knowledge that can be systematized and disseminated through academic publications. The themes on which the doctoral candidates focus correspond to those that comprise the most significant current debates at the United Nations and in the international system.

4. Undergraduate credit-building

22. As a result of its partnership with the University of California, Berkeley, in the United States, the University for Peace is now admitting senior undergraduates, on a case-by-case basis, to study at the University for up to one semester. Qualifying students can take the University's master's degree programme courses and the University will award credits towards a master's degree, which the student can later pursue at the University or elsewhere. This approach, which benefits both the student and the institution, encourages undergraduates to pursue their studies at the postgraduate level. Furthermore, during the summer current Berkeley students attend a six-week training programme on human security at the University campus in Costa Rica. This programme involves a community service component.

5. Semester abroad programme

23. Courses related to peacebuilding are increasingly in demand. Accordingly, the University offers study-abroad options for up to one semester for qualified graduate-level students from other universities. The model has proved successful for all interested parties and is an important way for the University to fulfil its mandate, given that the programmes of many partner universities can be enriched through the incorporation of peace studies based on the pillars of the United Nations, as well as gender inclusion.

6. Capacity-building programme

24. The University carried out highly successful capacity-building programmes, which are regarded as a model for development policy. In recent years, thanks to the financial support of the Government of the Netherlands, the University developed important programmes in Africa, the Middle East, South Asia and South-East Asia.

25. With funds from the Dutch Postcode Lottery, the University is implementing a three-year project on conflict resolution in the Karamoja region of Kenya and Uganda with the Uganda Martyrs University. This project is aimed at mitigating the cross-border pastoral violence in the region through people-to-people approaches that employ peacebuilding, sports, community theatre and women-led peace initiatives.

26. Since 2007, the University has been working with Ateneo de Manila University on a programme to build the capacity of Asian professionals in order to prepare them to take up leading positions in international organizations working on peacebuilding around the world. The programme, known as the Asian Peacebuilders Scholarship, is sponsored and supported by The Nippon Foundation and offers up to 30 scholarships annually for professionals from Asia: 15 from Japan and 15 from South-East Asia. In 2014, the University and Ateneo de Manila University gave the Scholarship a dual-degree format. This enriched programme offers intensive, specialized language training to facilitate the participation of professionals with lower levels of English proficiency, as well as the hands-on design and implementation of an intensive field project in Asia. Scholars obtain two master's degrees: one from the University for Peace in an area related to peacebuilding and the second from Ateneo de Manila University in political science, with a major in global politics.

7. Spanish-language courses

27. The University has had a longstanding record of offering master's degree programmes in Spanish since its foundation in 1980. After 2001, the University began to focus its efforts on offering master's degree programmes solely in English. Given that the University headquarters is located in Central America, where the wars of past decades have left a culture of violence in their wake, the University has begun a process of developing a workplan for the region. Since 2012, University administrators have met with key stakeholders in the region, including the Central American Integration System and several international cooperation partners.

28. The University has been offering courses in Spanish in an effort to engage with the Ibero-American community and with the many students from the region seeking an education in peace studies in Spanish, in accordance with its mission.

29. The University offers a programme in Honduras that seeks to train 100 judges, prosecutors and public defenders at the postgraduate level. Graduates receive a master's degree in international law and human rights, with the support of and in association with the Swiss Agency for Development and Cooperation and in coordination with the United Nations Development Programme. This programme also includes a short course designed for the Office of the Special Prosecutor for Human Rights of the Office of the Attorney General of Honduras, with the support of the European Union.

30. Furthermore, the University, in consultation with the Government of Honduras, is exploring the possibility of opening a small regional office in that country.

31. In June 2015, the Council of the University approved a pilot master's degree programme in Spanish on conflict resolution, peace and development. This is an effort to provide new learning opportunities to students from the region on topics related to conflict resolution and transformation. In order to increase the presence of the University at the regional and international levels, this programme may also be of interest to those outside the region who wish to have a multicultural experience with students primarily from Latin American States. This programme will launch in 2016 on the University's main campus in Costa Rica.

8. Accreditation

32. Since 2005, the University has implemented a systematic external evaluation of all its master's degree programmes. The external evaluations assess the academic quality and performance of each programme and provide recommendations for improvement.

33. The University joined the Costa Rican national higher education accreditation system in 2008 and is working to have all its programmes accredited as soon as possible. In October 2012, the University presented it with the reports of four programmes within the Department of Environment and Development. This report was examined by the higher education accreditation system and the programmes were accredited in March 2014.

34. The second phase of the accreditation process involves the Department of International Law and Human Rights. In August 2014, the University submitted the reports of two programmes within the Department to the higher education accreditation system. During the last week of June 2015, evaluators visited the University to assess the accreditation request. The final decision of the higher education accreditation system is expected by the second semester of 2015.

35. The third phase of the process of academic accreditation will focus on the Department of Peace and Conflict Studies and its programmes in international peace studies, gender and peacebuilding, media and peace and peace education. The reports will be submitted during the October 2015 call for accreditation by the higher education accreditation system.

36. The final programme to be presented for academic accreditation will be the master's degree programme in responsible management and sustainable economic development. However, higher education accreditation system regulations requires a period of maturity of at least five years. This programme began during the 2009/10 academic year, which means it will be eligible for accreditation after this upcoming year. The University is planning to present the request for accreditation in 2016.

9. Enrolment

37. As is the case with many educational institutions, full-time enrolment at the University's main campus has suffered owing to the effects of the international economic crisis. The number of applications has remained stable over time, but many students cannot afford to pursue studies without financial support or access to student loans. Such support from Governments, foundations and the private sector has become essential to guarantee access to these programmes, regardless of the students' financial status. Currently, many applicants do not pursue their applications when they learn that the University cannot offer substantial scholarship assistance.

38. In accordance with the guidelines established by the Council of the University and its medium-term and long-term strategic plans, the University is working towards achieving an enrolment of 500 students by 2020 in its various master's degree programmes. That number of students will allow the University to develop a critical mass of highly qualified professionals equipped with the correct training and tools who are capable of transforming complex international conflicts. In this sense, the University seeks to establish several international scholarship funds with the support of the signatory States to the Charter of the University and international philanthropic institutions. Training new leaders for conflict resolution will ensure that States Members of the United Nations have appropriate personnel with skills in dealing with new and more complex threats. The University, in partnership with Member States, has the capacity to train such professionals and thus transform future conflicts.

10. University alumni

39. The University's more than 1,600 alumni live and work in every region of the world. The vast majority of them work in a peacebuilding capacity in their home countries and internationally, often on the front line of conflict situations. Currently, the highest percentage of our alumni work for NGOs, but many of our graduates go on to work within the United Nations system and in various other international humanitarian capacities. Some now teach at the university level and work for academic institutions, while others have joined their national governments in diverse and influential fields, including international affairs, electoral tribunals and environmental policy. Another significant portion of our alumni community is pursuing doctoral degrees.

40. As part of the revitalization and relaunching of the University, its authorities have decided to institutionalize an alumni relations office, the main tasks of which will focus on planning and implementing programmes that keep alumni connected to one another and to the University, encourage and promote the professional development of alumni on an individual level and keep the alumni community aware of the University's developments and needs, thus allowing them to support its medium-term and long-term strategy.

11. Publications

41. The University is promoting a new programme for publications in its areas of expertise, in particular in the area of law and conflict resolution.

E. Subsidiary centres and affiliated institutions

42. With the goal of increasing effective cooperation ties, the University established a new deanship for international cooperation, the mandate of which is to focus the University's efforts on international cooperation, coordinate the work carried out by the regional centres and oversee special projects and relationships with partner universities and other collaborators.

1. Changes to regional offices

43. During the period 2012-2015, the University has embarked on a process of budgetary rationalization in an effort to strengthen its ability to carry out its

mandate. As a result of this process, the regional offices in Geneva and New York have been closed, as well as two associated centres in Montevideo and Bogota.

44. The University has continued to work alongside its Africa programme and the UPEACE Centre The Hague, and recently established a focal point office in Bonn, Germany. Furthermore, the University continues its work alongside the following affiliated centres, located on its campus: Earth Charter International, the Human Rights Centre and the Centre for Executive Education.

2. Africa programme

45. The Africa programme was established in 2002 with the objective of building the capacity of African universities in the areas of peace, gender, conflict, governance, security and development. The programme's undertakings are built around two major pillars: strengthening the teaching, training and learning capacity of African tertiary institutions and enhancing research and publications by African scholars.

46. The Africa programme collaborated in teaching the master's degree programme in gender and peace studies offered by the Cheikh Anta Diop University and Femmes Afrique Solidarité in Dakar and participated in co-teaching programmes under the Great Lakes programme at 10 partner universities.

47. After 2015, the Africa programme will expand its activities to French-speaking universities and launch new joint master's degree programmes in the areas of peace, conflict, governance and security.

48. The Africa programme is currently implementing a peacebuilding programme within the Karamoja region of Kenya and Uganda, mainly through people-to-people strategies, community theatre, transformative sports and women-led initiatives. The project targets cross-border areas to enhance meaningful interactions that could contribute to peaceful coexistence among the pastoral communities there. The project is also aimed at building local capacity through the provision of training on facilitation, teambuilding and fundraising, as well as networking. The project is implemented by the University and supported by the Uganda Martyrs University and Children Peace Initiative, Kenya. This programme is an example of action research and action learning, as the best practices are documented and integrated into teaching, both at the University and local partner universities.

49. The Africa programme is managed by the University regional office in Addis Ababa, which is financially autonomous. Despite financial constraints, the office is operational, but some of its programmes have been reduced. International cooperation and increased donor support are essential for the Africa programme to continue its important work in the region.

3. UPEACE Centre The Hague

50. Since 2012, the University has had a centre in the Peace Palace in The Hague, which offers peace and conflict education courses at the undergraduate level in cooperation with a number of Dutch universities. The focus is currently on peace and conflict studies, water and peace (water diplomacy) and urban peace and security. The centre works with various Dutch and other European partners, as well as experts from the University's global network, to achieve its objectives. A specific task is to promote and facilitate the recruitment of European students to master's

degree programmes and other educational activities at the University's main campus in Costa Rica. Another task is to facilitate the implementation of the activities of Earth Charter International in the Netherlands in cooperation with three partner organizations. The centre is an independent entity under Dutch law and is financially independent from the University. It receives financial support from the Government of the Netherlands, the city of The Hague and Dutch private funds.

4. German focal point

51. In 2014, the University established a focal point office in Bonn, Germany, through which the University has begun cooperation with Heidelberg University, the Max Planck Institute for Comparative Public Law and International Law and Osnabrück University. Both Osnabrück University and several Costa Rican-based academic institutions, including the University for Peace, have joined forces to create the Costa Rica Centre, where several joint research and teaching activities are under way. In conjunction with Heidelberg University through its Latin American dependency, the Heidelberg Centre, in collaboration with the Max Planck Institute, the University for Peace carried out its first specialization course in Spanish in 2014.

5. Earth Charter

52. The Earth Charter Centre for Education for Sustainable Development is coordinating the UNESCO Chair on Education for Sustainable Development, which was established in 2012. This is a joint initiative between the University and Earth Charter International. The Centre, in collaboration with partner organizations, helps to foster a generation of citizens who are committed to sustainability values. The focus of the Centre and the UNESCO Chair is at the intersection of sustainability, education and ethical reflection. It has been offering executive programmes on education for sustainability and facilitating research in this field, such as a recent publication on democratic equality, economic inequality and the Earth Charter.

53. The mission of the Earth Charter Centre is "... to promote the transition to sustainable ways of living and a global society founded on a shared ethical framework that includes respect and care for the community of life, ecological integrity, universal human rights, respect for diversity, economic justice, democracy and a culture of peace", with a special focus on educational needs. This project began as a United Nations initiative prior to the 1992 United Nations Conference on Environment and Development, but was carried forward and completed by a global civil society initiative. It is the product of a broad consultation process and a declaration of fundamental ethical principles for building a just, sustainable and peaceful global society in the twenty-first century.

54. In an effort to influence policymaking at the national and local levels, Earth Charter International organized an event in March 2015 to identify the synergies among key United Nations educational agendas, including education for sustainability, education for global citizenship and education for responsible consumption. In May 2015, in collaboration with UNESCO, it hosted a Latin American and Caribbean regional expert meeting on climate change education.

55. Recently, the values of the Earth Charter were applauded by Pope Francis in his encyclical "Laudato Si'", by stating that "the Earth Charter asked us to leave behind a period of self-destruction and make a new start, but we have not as yet developed a universal awareness needed to achieve this ... 'Let ours be a time

remembered for the awakening of a new reverence for life, the firm resolve to achieve sustainability, the quickening of the struggle for justice and peace, and the joyful celebration of life'".

6. Human Rights Centre

56. The Human Rights Centre was created within the contours of the stated mission of the University as specified in its Charter. In particular, the mission of the Centre is to promote the understanding, respect for and enjoyment of human rights. The Centre carries out this mission through specialized human rights education, training, capacity-building and awareness-raising activities, and takes a practitioner-based approach to the respect, protection and fulfilment of human rights, while promoting the integration of theory and practice. The Centre also takes a multidisciplinary approach to human rights and attaches equal importance to all human rights. The Centre complements the core mandate of the University, which is to provide higher education for peace through postgraduate and doctoral programmes.

7. Centre for Executive Education

57. The University's Centre for Executive Education engages with professionals and university groups through online courses, on-site workshops and customized group programmes. The online programme features a diploma in social innovation and hosted 99 students from 41 countries in 2014. Workshops and university groups allow short-term visitors to interact with the University through dynamic, specialized programmes in education, leadership, social entrepreneurship, sustainable development and other areas.

F. International relations

58. Institutional relations at the highest level were re-established in 2013 with the Government of Costa Rica. Former President Laura Chinchilla visited the University and gave the inaugural speech at the launch of the 2014-2015 academic year. Current President of Costa Rica Luis Guillermo Solís Rivera, in his statement to the General Assembly at its sixty-ninth session in September 2014, said, "If you want peace, prepare for peace." The Government of Costa Rica reaffirmed the importance of the University when it named First Lady Mercedes Peñas as one of its representatives to the Council. Minister for Foreign Affairs Manuel González was the keynote speaker at the opening ceremony of the 2014/15 academic year and Peñas served as keynote speaker at the 2015 commencement ceremony. In addition, the Government of Costa Rica requested technical cooperation from the University with regard to the Community of Latin American and Caribbean States summit and the diplomatic service reform act by its Parliament. In a similar manner, the University has contributed and exchanged important information with other national institutions.

59. With regard to the signatory States of the University's Charter with diplomatic representation in Costa Rica, the University has sought opportunities for interaction and has promoted their participation in its outreach activities, thereby promoting a permanent dialogue.

60. President of Liberia Ellen Johnson-Sirleaf made an official visit to the University, where she delivered a statement in which she said, "We know that to maintain peace we must make education and the employment of our youth a paramount commitment of governance". As part of her first visit to Central America, Ms. Johnson-Sirleaf unveiled a bust erected in her honour in the Garden of Nations on the University's campus.

61. In 2014, judge, professor and human rights scholar Thomas Buergenthal, a survivor of the Auschwitz and Sachsenhausen concentration camps during the Second World War, was awarded an Honoris causa Doctorate degree by the University.

62. University authorities, including its Rector, have been invited to participate in various academic and political meetings organized by Governments and international organizations in order to provide their view on topics within the international agenda, specifically those referring to international and human security and unequal access to justice.

G. Relations with United Nations bodies

63. The University is continually seeking partnerships, visiting scholars and collaborative activities with relevant United Nations bodies. One of the most important areas on which it continues to focus is the career development of alumni within the United Nations system. The University is a member of the United Nations group of institutions in Costa Rica and participates regularly in its sessions.

64. In 2014, University authorities had the opportunity to share and exchange views with the Secretary-General during his brief visit to San José. The Secretary-General emphasized the importance of guaranteeing educational access for all children, the importance of monitoring climate change and the fundamental task of promoting human rights and peace. In 2015, the President of Costa Rica and the Minister for Foreign Affairs met with the Chef de Cabinet of the Secretary-General to speak at length about the University and its plans to strengthen its capacity to fulfil its mission and, more generally, about cooperation between the United Nations and Costa Rica.

65. The UNESCO Director-General visited the University in June 2013 as part of the international conference and award ceremony for the UNESCO/Guillermo Cano World Press Freedom Prize, which was held in San José. The Director-General addressed students and university authorities, stating that UNESCO and the University had common convictions, aspirations and a new vision of educational development, and that peace was a way of life and that teaching must begin in the classroom, given that education was the best tool to overcome poverty and underdevelopment.

66. **United Nations Educational, Scientific and Cultural Organization Chair**. In October 2011, a new UNESCO Chair on Education for Sustainable Development was established with the University and Earth Charter International, which is located on the University campus. The signing ceremony was held on 2 February 2012. This is a three-year agreement with UNESCO and Earth Charter International for research and training in education for sustainable development. Earth Charter International will manage the Chair.

67. **General Assembly**. In its resolution 65/11, the Assembly commended the University, the United Nations Children's Fund and the United Nations

Development Fund for Women for their activities in further promoting a culture of peace and non-violence, including the promotion of peace education and activities related to specific areas identified in the Programme of Action on a Culture of Peace (see resolution 53/243 B). The Assembly encouraged all three organizations to continue and further strengthen and expand their efforts.

68. **United Nations University**. The University would welcome increased cooperation with the United Nations University in view of the encouragement in that regard set out in the Charter of the University for Peace.

69. **United Nations Office for Disarmament Affairs**. The University signed a new cooperation agreement with more than 10 partners to provide scholarships and training to more than 140 women from the South on issues related to peace. This initiative is aimed at broadening women's participation in various fields related to peace by enhancing the diversity of existing networks to increase the critical mass of women experts participating in the planning, decision-making and implementation of disarmament and non-proliferation activities.

70. In 2014, the University established the Elizabeth Odio Benito Chair, in recognition of her career and professional contributions to the field of human rights, including as a judge of the International Criminal Tribunal for the Former Yugoslavia. This Chair promotes studies in the field of human rights and international justice.

H. Community relations

71. The relationship between the University and the local communities of El Rodeo and Ciudad Colón is excellent. University authorities, faculty and students regularly participate in and contribute to the towns' cultural activities. In addition, University students conduct community work throughout the towns and municipal authorities contribute actively to the University by keeping its authorities informed of the work being done and by resolving issues that are critical to the functioning of the University. Both the municipality of Ciudad Colón and the Government of Costa Rica resolved accessibility problems at the University caused by poor road conditions. As part of this relationship, the University provides an annual scholarship to a resident of Ciudad Colón. Master's degree students in the gender and peacebuilding and peace education programmes are presently conducting research projects in Ciudad Colón on violence against women and bullying in schools.

I. Financial situation

72. Notwithstanding the appeal by the Secretary-General in his report to the General Assembly in 2009 (A/64/281) and in 2012 (A/67/272), in which the Assembly invited Member States to contribute to the University, very few countries have provided support. International experience shows that universities around the world must rely on endowments and contributions to support themselves.

73. This reality, combined with the impact of the international financial and economic crisis that has reduced student enrolment, made the University face a critical financial situation in 2013. As a result, drastic cost-cutting measures were taken to improve the University's efficiency under a significantly reduced staff. This was achieved without affecting the number of resident faculty members. In spite of

a more restricted budget during the 2013/14 and 2014/15 academic years, it was impossible to avoid incurring a deficit, which requires financial support that goes beyond current efforts. The measures taken have reduced the existing deficit considerably; however, the process of revitalization and relaunch of the University's activities require direct support from the signatories of the University's Charter, as well as all other States that seek to promote the training, through higher education studies, of professionals for peace.

74. The University's objective is to be self-sustaining on the basis of income generated by its teaching and training programmes, the support of its Member States and donations and special projects to sustain its activities. The University extends its special gratitude to The Nippon Foundation for its significant support of the University through its Asia Pacific scholarship programme. In addition, the University thanks and recognizes the Dutch Postcode Lottery for its significant contributions to the University as a whole, with special attention to the programme in the Karamoja region of Africa.

75. For the first time since the University's creation in 1980, authorities have reached an agreement with the Government of Costa Rica, through its Ministry of Foreign Affairs, to institutionalize a permanent financial contribution to the University on an annual basis. This requires the approval of an additional protocol to the original headquarters agreement, which must be ratified by the Congress of Costa Rica. Other Member States are invited to match this contribution as a sign of their commitment to the mission of the University and in recognition of the important role of Costa Rica in peacebuilding, disarmament and nature conservation.

J. Development strategy 2015-2020

1. Short-term vision

76. The University is initiating a process of revitalizing and relaunching its core activities, as decided by the Council at its twenty-fifth session, held in June 2015. The main objective of this process is to align the University's endeavours with those of its main stakeholders, the United Nations and the signatory States of the Charter of the University, through a process of academic and institutional reform. As a first step, it was necessary to align the academic programmes offered by the University with the new realities being discussed at the United Nations with regard to the post-2015 development agenda and in the light of the Organization's seventieth anniversary. These reforms include the incorporation of increasingly relevant issues, including human trafficking, migration, gender mainstreaming and terrorism.

77. The University will work closely with the international community, focusing on strengthening its ties with the signatory States of its Charter. The University is in a key position to provide training to Government officials, civil society organizations, private sector actors and NGOs. In this regard, the University finds itself in a process of strengthening its capacity to fulfil its mandate by adding high-level professionals with extensive experience to its staff and faculty.

2. Long-term vision

78. The University must promote both its role as an international academic institution and political dialogue, as well as endorse the General Assembly

objectives assigned to it. It has carried out a comprehensive process of academic reform in an effort to better execute its mission. The vision for an even more vigorous and effective institution in the long term includes the consolidation and reinforcement of the capacities of the main campus to serve the entire University system through curriculum development, face-to-face teaching and research and sustained two-way links to the considerable experience and knowledge found in institutional partners in other parts of the world. Strengthening the influence and presence of the University in several regions and an active programme for sharing knowledge for peace, including distance learning and the dissemination of toolkits for teaching, will also be expanded in terms of content and reach.

79. In 30 years, there will be more than 9 billion inhabitants in the world, unless the result of our inability to reach an agreement on climate change leads to a disaster of unimaginable proportions before that time. What remains clear is that, in this crowded world, the lack of natural resources, in particular water and energy, will become the basis of new and deeper international and local conflicts. These conflicts will require the development of effective preventive measures for confronting unrest, as well as the new threats and risks in an increasingly complex world. Among these measures, an essential one is education on peace and gender equality. Consequently, the relevance, significance, importance and transcendence of the University in fulfilling its mission and in implementing the guidelines of the General Assembly, which are aimed at preparing new generations to achieve the goals related to sustainable development, the protection of human rights and climate change mitigation and monitoring measures, will contribute to a better and more stable peaceful coexistence. In turn, the University will contribute with ideas, in collaboration with other members of the United Nations System, towards the creation of new conceptual and methodological frameworks that enable the possibility of measuring and monitoring progress in conflict prevention and allow for a greater, more harmonious and peaceful coexistence.

80. Through this strategy, by 2020 the University will have reinforced its ability to train new generations in the resolution and transformation of increasingly complex and interdependent conflicts. Similarly, the work conducted will have strengthened its position in providing quality postgraduate education and training of governmental and civil society actors. The process of academic reform will be re-evaluated constantly to ensure academic excellence and harmony in the analysis of old and new conflicts, the causes and characteristics in each region and, in particular, the complicated links between political, ethnic and religious causes and criminal activity. This greater capacity for analysis needs to be transformed into curricula, specific education programmes and training opportunities for a range of actors. This relaunch will make it possible for the University to design a long-term perspective to contribute substantially to the institutional work of effective and cooperative multilateralism.

III. Conclusions

81. The analysis made by the founders of the University 35 years ago with regard to world conflict was prophetic, to say the least. As stated in the appendix to the Charter of the University, "the persistence of war in the history of mankind and the growing threats against peace in recent decades jeopardize the very existence of the human race and make it imperative that peace should no longer be viewed as a negative

concept, as the end of conflict or as a simple diplomatic compromise, but rather that it should be achieved and ensured through the most valuable and most effective resource that man possesses: education". Never has this been more relevant than at the present moment, with the emergence of asymmetric threats and terrorist actions of global reach, as well as a change of unprecedented magnitude in global political and strategic relations, generating greater global destabilization and a decrease in the effectiveness of the multilateral system.

82. The University is carrying out a mission that is increasingly central to the future of the world. Education for peace must be expanded until it touches all people everywhere, convincing them that armed conflict must be relegated to the past. This will only be accomplished through the ongoing training of future world leaders from Governments, NGOs and the private sector at the academic level in peaceful conflict resolution and the relationship between peace, development, human rights and environmental protection as conditions for economic development and increased equality.

83. For the University to accomplish the mission that it has been given by the General Assembly, Member States must take the lead in supporting that mission by recognizing the institution through generous financial contributions that will make it possible for the University to offer its programmes of study to all students who wish to participate in them and facilitating the University's operations in host countries. To accomplish the required adjustment to impact future generations of world leaders, the General Assembly may consider augmenting the capacity of the University by providing resources through assessed budgetary contributions for a limited period of five years, until the transformation is accomplished and extrabudgetary resources become available.